

INTELLIGENCE MONOGRAPH

**THE CENTRAL INTELLIGENCE AGENCY'S
POSITION AND FUNCTION
IN AMERICAN SOCIETY:
ISSUES AND ARGUMENTS**



CENTER FOR THE STUDY OF INTELLIGENCE

CENTRAL INTELLIGENCE AGENCY

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CENTRAL INTELLIGENCE AGENCY
OFFICE OF TRAINING
Center for the Study of Intelligence
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THE CENTRAL INTELLIGENCE AGENCY'S POSITION
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A. INTRODUCTION

The concept of an open society with deeply rooted values is fundamental in our constitutional system, our laws and our traditions. Yet we almost unanimously accept secrecy as a necessary part of our existence as individuals, as in our emphasis on our right to privacy; and since the beginning of America's history -- starting with the deliberations of the Constitutional Assembly -- our leaders have found a measure of secrecy indispensable for conducting some of the nation's business. Morality, both private and public, has remained strong as a general principle; but its interpretation and its application to particular situations, and especially its translation into concepts of ethics and propriety, have often found us on slippery ground. We are taught that we must not kill, steal or lie; yet whenever the purpose or the occasion, in the view of most of us, were appropriate, men became heroes for doing some or all of those things, particularly if they did them in defending the nation.

A great deal has been written on subjects related to conflicts between our open society and morality on the one side and secrecy, with particular emphasis on secret intelligence operations, on the other. At this point in

our history, a reference to those conflicts has become the single most favored way to begin any systematic look at the Central Intelligence Agency's clandestine function and future. In using this approach in its first annual report, the Senate Intelligence Committee has followed both precedent and the logic of recent events.¹ In the abstract, of course, other terms of reference -- or at least other points of departure and emphasis -- are equally legitimate; indeed, different perspectives have at various times been used by those who have tried to justify CIA's functions as well as those who have sought to deny CIA's right to exist. (Allen Dulles, for instance, one of the best known of CIA's numerous former directors, saw "our intelligence operations" as our free society's means of bridging the gap between our open political processes and "our antagonists' ... wall of secrecy and security."² Philip Agee, a former CIA employee dedicated to the exposure of CIA operations, called CIA one of the "manifestations of a ruling class's determination to retain power (in) irreconcilable class conflicts that only socialist revolution can resolve."³) For practical purposes, however, the acknowledgement of fundamental conflicts is as good a starting point for us as any; and if this approach has in the past created a fixed set of assumptions, it only follows that those assumptions must be dealt with.

We hope to follow this course without going too far afield. Quite aside from the Dulles-Agee illustration, we

believe that the basic extremist positions -- advocating the abolition of secret intelligence, however the term is understood, in the interest of maintaining an open society, or the suspension of law and morality in the interest of effective intelligence operations -- are too thinly represented and, in fact, too unrealistic to carry much weight in a serious examination of practical issues, even though such views cannot be altogether ignored. We can start, but must not stop, with fundamentals. The Rockefeller Commission put it succinctly: "Individual freedoms and privacy are fundamental in our society. Constitutional government must be maintained. An effective and efficient intelligence system is necessary; and to be effective, many of its activities must be conducted in secrecy. Satisfying these objectives presents considerable opportunity for conflict."⁴ If, having recognized this, we resist the temptation to think in terms of irreconcilable absolutes, the basic questions are likely to be how we can best address conflicting principles and practices, where lines must be drawn, and how rules can be established.

The central issue before us, then, is not whether our nation can afford both an open society and an intelligence system, but what such a system in such a society is to accomplish, what tools it needs, and what it must not be allowed to do. Our point of departure will be to examine

how this issue has been seen by the public (in media coverage and public opinion surveys) during CIA's brief history. Since the public debate has largely focused on questions of abuses and prevention, a look at the charges -- to the extent that they apply to the Central Intelligence Agency -- should be a fitting way to continue the examination. There are limits to this approach: Our objective is not the determination of guilt or innocence nor, per se, of the fairness or unfairness of specific allegations, but the identification of criteria for optimal solutions to long-standing and difficult problems that are still with us and, in some form, are bound to remain with us. Thus we should concentrate on generic rather than specific charges. This should lead to a clearer definition of the questions we need to consider. It should be followed by an examination of the current issues, as seen by various writers, investigators and other observers. In the course of this, it should become apparent how much of a consensus and how many continuing controversies emerge from all this.

As a part of this process, we will offer, in identifiable form, pertinent views expressed at various times by responsible CIA officials and spokesmen, as well as three separate comments reflecting CIA's position on the principal topics -- components we consider essential features of any CIA contribution to the debate. This, however, is by no means the main purpose of the exercise. In order to illuminate the

issues, we will present examples of -- or at least point to -- a great variety of viewpoints. Given the immensity of pertinent material in print, this undertaking is likely to be exhausting before it becomes exhaustive -- indeed, we can as a rule go no further than choose illustrative examples from the many that might be used; but we hope, in the course of this exposure, to stimulate further thought, discussion and reading.

It remains our belief that in a democratic society opposing principles of comparable merit can and must lead to acceptable compromises. Beyond that, we do not propose to offer final judgments on the terms of such compromises, nor do we expect others to render unanimous verdicts. But momentous questions have been raised, and they deserve informed as well as dispassionate discussion. To that end, we hope to be of assistance.

B. HISTORY OF PUBLIC OPINION

1. THE FIRST TWENTY YEARS: MEDIA REFLECTIONS OF KEY EVENTS:

a. Genesis (1947):

"The genesis of the CIA was the National Security Act of 1947," noted one observer who has tended to be rather critical of CIA's performance. "Establishment of the Agency at that time went virtually unnoticed ..."¹ While this might be true in comparison with the news coverage two and three decades later, the fact is that the discussion of the event in 1947 was lively enough. "A radical departure from this country's traditional policy," commented the Indianapolis News in its New Year's edition. "Probably the success of the Japanese surprise attack on Pearl Harbor helped persuade the committee to approve ... an intelligence agency ... The question is whether this country must, in self-defense, make sure, from its own sources, what other countries are doing to prepare for war." -- In their column published in the New York Herald-Tribune on January 12, Joseph and Stewart Alsop expressed the thought that "... nothing is more obvious in the present sad state of the world than the need for a professional American intelligence service." -- "Uncle Sam is in a brand new business," observed the Green Bay, Wisconsin, Press-Gazette on

January 15. "He must organize spies ... the funds needed must be concealed ... We cannot let the rest of the world analyze congressional appropriations for our back-stairs work ... When the amount allowed begins to hurt, will our people cry in pain or wink the other eye as one does who knows he is in a dirty business and doesn't care to discuss it in public?" -- On March 5, the Washington Post recommended that "Congress should make it mandatory upon the Executive to pick a civilian" as intelligence chief and on May 29 further reasoned that "continuity in office is imperative in so vital a function as intelligence." -- In a column remarkable for its anticipation of future issues, Hanson W. Baldwin wrote in the New York Times on April 7: "Intelligence, in the modern sense, is of global proportions; it must enter into every phase and activity of life; it must work secretly as well as openly; it must often use methods repugnant to the ethics of many ... A central intelligence group or agency is absolutely essential in this atomic age. But (it) implies by its very creation considerable grants of power. It is important, therefore, not only that those grants of power be given -- for that is an imperative of this age no matter how we dislike it -- but that those grants of power be thoroughly defined and reasonably restricted The act is framed ... by those who fear that disclosure of information ... might aid a potential enemy This is an admitted risk.

But the counter-risk to democratic government ... is greater. No official secrets act ought to be passed, unless it is very carefully studied and narrowly circumscribed by Congress The final picture is one of a new agency ... engaged in what is, for Americans, chiefly a new game, a game that knows no rules. It is sometimes a dirty game, sometimes a glorious one, but it is one that must be played with skill if security is to have much meaning in this atomic age. The intelligence agencies of the government need thorough study, careful organization and full encouragement by Congress." -- In another column three days later, Baldwin added: "The CIA cannot have and should not have any of the aspects of a police agency, and it cannot have any authority in counter-espionage domestically" -- On April 11, the Christian Science Monitor characterized the forthcoming organization as "that mental radar of evaluation and espionage designed constantly to scan foreign intrigue, planning, and strategy" and, in an April 14 editorial, added: "A modern nation needs intelligence from abroad and wisdom at home." -- On June 15 and 23, the Chicago Tribune, presumably reflecting worries within the official establishment, weighed in with strong objections to the centralization, although not to the conduct per se, of worldwide intelligence operations. It asserted that the existing Central Intelligence Group had already

"forced the war department to liquidate its world-wide secret intelligence work and ... effected the disbanding of the Federal Bureau of Investigation's extensive undercover system in South America," calling it in quick succession a "budding American Gestapo" and a "sloppily organized outfit," and decrying the "new and additional burden to the taxpayers ... to do worse what existing intelligence agencies already do." -- Writing in a similar vein in the Washington Times-Herald on June 24, John O'Donnell further described Central Intelligence as "this ambitious unit, which is a rather noisy set-up for a supposedly hush-hush organization."

In brief, there was a mixture of attention, worry, suggestions and quibbles, and a predisposition to regard intelligence as "dirty business." But observers were neither blind nor silent; and if the impending departure into the mostly untested waters of centrally controlled espionage was viewed with a healthy measure of discomfort, there seemed to be little doubt in anybody's mind that the trip was necessary.

b. CIA Act (1949):

Much less interest was exhibited in 1949, when Congress passed what has been called "an enabling act containing administrative provisions necessary for the conduct of the Agency's mission."² The act exempted CIA from having to disclose its "organization, functions,

names, official titles, salaries, or number of personnel employed" and from all usual expenditure limitations, and it authorized the inclusion of CIA funds in the budgets of other departments, as well as, inter alia, the admission of limited numbers of aliens. "A bill legalizing the overseas spy operations of the Central Intelligence Agency," the United Press called it in an item published in the New York Herald Tribune on 21 June, noting that Congressional hearings had been secret after warnings by Democratic leaders that "detailed discussions of the provisions might tip off foreign agents ..." -- On the same date, the Associated Press was quoted in the New York Sun to the effect that CIA had been authorized "to assign its agents to schools, industrial organizations, labor unions and other groups in this country for training."- Significantly, the most apprehensive reaction was registered by the Communist Worker on June 26: The bill was seen as "giving unsurpassed power to the Central Intelligence Agency" which had "extended the keyhole peeping, wire-tapping and rumor-reporting of the FBI into every corner of the earth. Any it pays the good money of the American taxpayer for every rumor." But there was no sign that the majority of the taxpayers themselves, or the other press organs, were similarly aroused.

c. Coup in Guatemala (1954):

At the time of its seventh birthday in July 1954, CIA had been widely credited with two major successful political

actions abroad: The overthrow of Iranian Premier Mohammed Mossadegh and that of Guatemalan President Jacobo Arbenz Guzman. In the words of the Church Committee, "both were quick and bloodless operations that removed two allegedly Communist-associated leaders from power and replaced them with pro-Western officials."³ Press references to CIA's role were generally cautious and sometimes respectful; concurrent extensive adverse publicity by Communist news services was ignored. "If somebody wants to start a revolution against, say, Guatemala," wrote James Reston in the New York Times on June 20, 1954, "...Allen Dulles, head of the Central Intelligence Agency,...has been watching the Guatemalan situation for a long time. It was his associates who... have been active in the defense of the area..." -- Calling CIA's record "in keeping U.S. policy makers informed...a big question mark," U.S. News and World Report, in a feature article on July 16, added that "CIA's one big success, according to prevailing opinion in Washington, is its role in the recent revolution in Guatemala." -- "The important thing...was that the United States, aside from whatever gumshoe work the Central Intelligence Agency may or may not have done, has kept hands off" Guatemala, Newsweek told its readers on July 16, thereby implicitly embracing the principle that intelligence operations were officially unattributable. -- On October 30, the Saturday Evening Post featured what it called

the "first exclusive report on the CIA" by Richard and Gladys Harkness, revealing "the part it played in overthrowing King Farouk in Egypt, Premier Mossadegh in Iran, President Arbenz in Guatemala -- and how its agents operate behind the Iron Curtain!"

Without reference to Guatemala, CIA got its share of accolades that year, typified by the comment (in the Christian Science Monitor on September 8) that "the CIA is a functioning successful outfit, operating in a field in which Americans have hitherto been largely inexperienced." But the major part of the attention riveted on CIA in 1954 had nothing to do with operations in Guatemala or elsewhere; it concerned charges brought by Senator Joseph R. McCarthy that the agency had been infiltrated by "spies and Communists," and an investigation of CIA by General Mark M. Clark that appeared -- somewhat unjustly -- to be linked to those charges. The McCarthy attacks drew loud echoes if little actual support from most of the media; there was a feeling, as expressed by Peter Edson in the New York World Telegram on 10 July, that "any public investigation would probably destroy the effectiveness of CIA operations by disclosing its operatives" and "might reveal some of the relations which American intelligence services have with those of foreign governments." -- In an editorial titled "Investigating the CIA," the New York Times observed on July 11

that while "other governments have had a century or more of continuous experience in this delicate field, CIA has had only seven -- and its troubles have been in proportion ... partly because of the essential secrecy of its operations ... Congress generally has respected CIA's need for security. But there has been criticism because of the lack of Congressional supervision."

Thus the issues were described in terms that were in part similar to those that would be used twenty years later. But the context was different. The main concerns in the mid-fifties were CIA's security and effectiveness; and while secrecy provisions were recognized as hindering the exposure of possible lapses in either field, it was universally conceded that the need for secrecy was overriding.

d. Bay of Pigs (1961):

The landings in Cuba by CIA-trained exiles in April 1961 did not come as a bolt from the blue. The merits and demerits of a move against Premier Castro had been hotly debated by Administration officials and Congressional leaders; some of the arguments had been made in public; and "while this debate was running, magazines and newspapers began to print articles on and pictures of Cuban exiles preparing for invasion attempts

at training camps in Florida" (New York Times Review, April 20). Initial reactions to CIA's participation evidently reflected no more than basic attitudes toward the move itself. On 17 April, within one day of the invasion, the Charlotte, N.C., Observer commented that "the official U.S. position is the proper one. As outlined by Secretary of State Dean Rusk yesterday, the U.S. has not intervened and will not intervene ... But our sympathy is clearly with the movement to overthrow Castro's Communist dictatorship. And if the Central Intelligence Agency is not quietly lending a hand, as it did in Guatemala in 1954, then it is grossly negligent." -- Similarly, the Phoenix, Arizona, Republic noted on 19 April that there were those "who maintain that the U.S., principally through the CIA, is secretly aiding the rebels. We hope so, for we believe the President's decision not to intervene under any conditions is ... unwise ..." -- In contrast, Murray Kempton, in a column published in the New York Post on April 19, said he "would speak nothing harsh about those Cubans we sent on this errand ... There is every excuse for them; but there is no excuse for Allen Dulles or John F. Kennedy."

As events rapidly deteriorated, the commentary on CIA's role turned along with the tide. "So once again the State Department has bungled badly and the pinks who rule policy there and in the CIA are proven not to be in

touch with the real thinking of the Cuban masses ...," thundered radio commentator Fulton Lewis, Jr. on April 19. "A sad picture indeed, and once again the product of the pantywaists in the State Department and the CIA." -- "Although the role of the CIA was officially sanctioned, that agency seems certain to be brought under tighter control by President Kennedy," said the New York Times one day later. "Demands in Congress for a committee to serve as a 'watchdog' over its activities may also be revived." -- Chalmers M. Roberts echoed this on April 23 in the Washington Post: "The war drove (the Government) into the cloak-and-dagger business, formalized ... under the Central Intelligence Agency. The evidence of the Cuban affair is that the CIA has gotten out of hand, despite some notable earlier triumphs ... most Americans are ready to punch a Communist in the nose but ... they are uneasy about the dirty kind of business involved in para-military operations ... there is going to be a hard look at the CIA setup itself." -- We might quote samples from a few other commentaries made on the same date: "... while American sympathy is with the exiles, American policy must never again be based on wishful thinking or on stupid miscalculations by activities of the Central Intelligence Agency" (New York Times); "... CIA is not looking so good. The ill-starred invasion by anti-Castro forces was the CIA baby" (Omaha, Nebraska, World

Herald); "The 'spooks' ... apparently could have gathered better information on Cuba from a daily reading of the Miami Herald or most any other American newspaper that covers Latin America" (Miami Herald); "Cuban story: CIA goofed" (Chicago American). -- Simultaneously, the Miami News tried to defend CIA in terms that are equally illustrative: "At best, when the CIA entered the anti-Castro exile organization picture almost two years ago, it faced an almost impossible task. One fact quickly overlooked by the CIA critics, however, at this point is that the Cubans themselves sought out the assistance of the organization ..." -- All this led to what the St. Louis Globe-Democrat on April 26 called "a sharp split ... within the administration over charges of poor intelligence information preceding the Cuban invasion fiasco ... Unless a lid is clapped over the inter-agency feud, the CIA issue can develop into a full-dress Brannigan."

The shock inevitably wore off; President Kennedy formally accepted responsibility for the Cuban affair and appointed General Maxwell D. Taylor as the head of a group, including CIA director Dulles, which was to investigate intelligence operations. But the public debate was never entirely stilled, even after Mr. Dulles and some of the senior aides associated with the Cuban venture had in due course been replaced. For the first time, CIA had been openly associated with the failure of a mission abroad; the sheen had been removed from its reputation for

efficiency and success, and "Bay of Pigs" became a term of opprobrium from which the Agency never completely escaped.

e. Disclosure of Secret Subsidies for Student Organization (1967):

In its March 1967 issue (which actually appeared in February), Ramparts, described in the New York Times on February 20 as a journal originally "aimed at liberal Catholic intellectuals" but of late a "muckraking magazine" and a "gadfly to the establishment," published an expose of secret CIA subsidies to the liberal-oriented National Student Association (NSA). The story, heavily advertised in major newspapers and one of a sequence of attacks on CIA printed in the same magazine, rested primarily on disclosures by a dissident NSA officer and described in some detail the use of secret conduits for CIA funds and the collaboration of key officials in the student organization. In a commentary published with the article, Marcus Raskin, co-director of the Institute for Policy Studies, formulated a perspective: "... after we examine the CIA's motives and purposes, we are left with Cold War wreckage as serious and immoral as the Bay of Pigs operation, the U-2 overflights, or the Guatemalan caper ... The CIA owes an apology to the innocent college students of this last generation."

The reaction was instantaneous and nation-wide. At colleges, the Associated Press reported, it was "varied" (Washington Star, February 15). A student leader at Columbia University said students felt "anger and distaste that CIA has been manipulating idealistic college students ..."; but a fellow student saw "no reason for shock or surprise," adding: "I should hope our government would be keeping tabs on any organization which has international activities." In the judgment of a Harvard law professor, "the harm done to student integrity ... far outbalances whatever intelligence benefit there would be." -- The Christian Science Monitor of February 6 called student reaction "a mixture of indignation and amusement," the latter based on the observation that after 14 years and millions of dollars of CIA support, the student organization remained "a voice of opposition to American foreign policy in general and the CIA in particular." Some students declared themselves "shocked" or flabbergasted, while others said things like: "I don't think the CIA affiliation affected NSA that much ... The reaction on campus seems to be to wait and see." -- The student organization's president (quoted in the Baltimore Sun) and one of his predecessors (in the Beacon Journal of Akron, Ohio) were represented on February 15 as indignantly denying that CIA money had

limited their organization's independence. "The means were never illegitimate," said the latter, "and the end was always worthy." -- And, according to an account published in the Washington Post and Times Herald on February 20, Gloria Steinem, one of those assisted, maintained that CIA "wanted to do what we wanted to do -- present a healthy, diverse view of the United States ... I never felt I was being dictated to at all."

Some commentators deplored less the CIA subsidies than the Ramparts disclosure of them. Thus James Reston wrote in the New York Times on February 14 that "... efforts to counter Communist influence in the universities, press and trade unions of the world have been seriously hampered" by the disclosure. "... The problem, however, remains ... and there are no private institutions available to finance the American leaders." -- Defenders of CIA's subsidy program included a number of lawmakers, among them Senator McGee of Wyoming, quoted in the Baltimore Sun of February 17 as warning against "short-sighted criticism of the CIA's role ... prompted primarily by those who wish to 'get the CIA' for any reason, any excuse." -- There was some editorial comment around the country in the same vein as that in the Watertown Daily Times, New York, of February 15: "It is too bad the college boys and girl are disenchanted over their modest stipends from the CIA. It is too bad that we have swung to the point of naivete in world affairs that we think we can

become involved in a dirty fight, lily-pure in instincts, wearing only white gloves."

But by far most of the comment was unfavorable to CIA, leading to a request by eight Democrats in the House of Representatives for a White House inquiry (Washington Star, February 15) and to an administration announcement that the subsidies had been stopped. "The CIA ought to stay away from college students," counseled the Riverside Press in California on February 14. "College students have enough trouble without the CIA. And the CIA has enough trouble without college students." -- "This maladroitness maneuver had reduced all the scholarly and professional groups of America, in their standing before the world, to the ranks of the suspected," commented the Washington Post and Times Herald in an editorial titled "Clumsy Cupidity" on February 15. That same day, an editorial in the Baltimore Sun, referring to "blunders" by CIA, declared: "The only good thing that can be said for the secret financial relationship ... is that it is being ended." -- In the New York Times issue of February 18, Max Frankel alluded to a "crisis of confidence." -- Representative Edith F. Green of Oregon, according to the same account, issued a statement suggesting that "perhaps we need a law requiring the registration of government agencies trying to influence education." -- Nor was criticism of CIA confined to the liberal side. The Baltimore Sun's summary of February 15, for instance,

quoted Republican Representative Lukens of Ohio as saying it was "shocking and scandalous" for CIA to help finance an organization that "has consistently opposed the strategic interests of the United States and the policies of its Government." -- And the National Review, in an article attacking Ramparts on April 18, also maintained: "It was silly for CIA to give money to ... the NSA creeps ..., but it was moronic to trust them. For having done so CIA does indeed deserve what it has got."

In moderate quarters, there was considerable sentiment in favor of continuing to underwrite student programs abroad -- but not through CIA. As the San Francisco Examiner put it in a February 17 editorial: "There is only one thing wrong ... Since the purposes of the aid were perfectly legitimate, it never should have been given in secret ... Today the Communist drive for control of the world student movement continues ... It is a challenge which must be met. This time let's meet it in the right way -- openly. There is no reason for secrecy, and there never was."

On February 15, in response to the public clamor, President Johnson appointed the Katzenbach committee. Its report fully adopted the approach espoused in the Examiner editorial, and the crisis passed from the headlines.

CIA, however, now had acquired something of an image of secret domestic manipulation, a troubling one even for many of its supporters. Added to the impression left by the Bay of Pigs episode, this constituted no mean handicap for the future. Public objections to CIA's charter and its methods, hitherto voiced mainly in a theoretical context, appeared to assume a more concrete significance. They intensified as time went on, and followed CIA into the seventies, the era that saw a dramatic weakening of the executive authority under which CIA had been conducting its operations.

In the years following Watergate, public reaction to CIA became a subject of recurrent interest to those attempting to measure public opinion. A look at some of the poll results should be appropriate here.

2. PUBLIC OPINION SINCE WATERGATE: POLLING RESULTS

(Note: The following paragraphs offer a summary, and highlights, of public opinion poll results from 1973, when CIA-related questions began to be included in the surveys, to 1976, when interest tapered off. -- For a more detailed account of the individual polls, see Annex A.)

"Every so often, the country rediscovers the CIA," wrote a Washington correspondent for the Minneapolis Tribune on August 19, 1973. "This usually happens when one of its secret endeavors is disclosed under circumstances embarrassing

to the Central Intelligence Agency and to the president it serves." This was a part of his comment on a Gallup poll, conducted during the Senate's Watergate hearings but before the public testimony of former CIA Director Richard Helms and other high CIA officials. While a majority gave CIA a favorable rating, people appeared to have reservations; and CIA's popularity did not measure up to the FBI's. A subsequent Harris poll provided a probable reason: Most people had the impression that CIA had played a part in the Watergate affair.

A few more polls followed in 1974, raising questions addressing CIA's political role abroad (which was generally accepted), with special reference to intervention in Chile (which was deplored), and looking into the merits of reducing secrecy in government (a popular proposition indeed). But then, near the end of that year, CIA moved to the front of the stage, and the pace began to change.

On December 22, 1974, the New York Times published the first of Seymour M. Hersh's articles charging CIA with violating its charter by engaging in a large-scale domestic operation, and referring to "an extensive investigation by the New York Times" as well as to "a check of the CIA's domestic files ordered last year by Mr. Helms' successor, James R. Schlesinger." On January 4, President Ford responded by appointing the Rockefeller Commission with instructions to investigate, and prepare a report on, CIA activities in the United States. That same month, both the Senate and the

House of Representatives moved to set up their own probes. Later that year, the Church Committee began to look into CIA's role in assassination plots against foreign leaders and eventually published its Interim Report on that subject. All this was further investigated and discussed by the media in an aggregation of efforts that, in terms of volume, emphasis and resources brought to bear on the CIA story, was unprecedented in the organization's history. CIA still carried the psychological burdens of the Bay of Pigs failure and of the disclosures of its domestic subsidy program in 1967; it was affected by the widespread disillusionment with the Cold War in which it had been spawned, and with the Vietnam war in which it had been called upon to play a visible role; and if considerations of "national security" or respect for decreed secrecy might have inhibited some of the coverage in an earlier day, such milestones as the release of the "Pentagon Papers" in June 1971 and the recent resignation of a President under fire had provided ample indication that standards had changed.

Surveys of public attitudes toward CIA and CIA-related issues now became a more common practice. In their totality, the polls offer fascinating insights into basic perceptions, into responses to current events, and into reactions to different angles of the same issue. While there was no absolute consistency and, in particular, various regional polls produced wide swings of opinion on some of the issues, certain general impressions stand out. Most people, it developed, were opposed to such practices, widely and prominently.

attributed to CIA, as "spying on Americans" and assassination plotting and in most instances regarded a greater measure of congressional and executive control of CIA as desirable. Invariably, however, a majority rejected suggestions that the agency be either abolished or completely re-designed, and they wanted it to be able to operate in secrecy. In fact, concern over possible abuse of secrecy was rivalled by apprehension over the damage that was thought to have been caused by the leakage and publication of so much material that had previously been considered secret.

3. PROBLEMS OF INTERPRETATION:

We have tried to examine attitudes during CIA's early history through the medium of news coverage, and in more recent years through public opinion polls, a yardstick not available for times past. Despite the uneven -- and often regionally oriented -- nature of the evidence, we believe that the results tell a story: one of fundamental as well as changing concerns and of apprehensions as well as desires, but not one of solutions. Those looking for easy answers will not find them here. In the last analysis, the conflicts alluded to at the outset were as real in the realm of popular sentiment as they would be in any forum attempting to debate the nation's best interests. Those interests were patently not seen by Americans in a neglect of either democratic rights or foreign intelligence capabilities. Indications are, rather, that preferences and priorities are likely to vary

from time to time, group to group, issue to issue, and even case to case.

Among the limitations of our survey is the absence of good criteria for measuring the intensity -- as opposed to the orientation -- of popular sentiments, and for distinguishing between media reflection of and media effect on those sentiments. We shall leave those gaps as we found them. We should like to cite two cases, however, which might help to illustrate at least a part of the problem.

In mid-1974 David A. Phillips, then preparing to leave his CIA position, by his own account asked a lecture agent "how much revenue I could expect from a year of ... attempting to set ... the record straight on CIA ... 'I expect you can make between five and ten thousand dollars,' the agent said. 'But what about speaking against the CIA? That way I can promise you between fifty and a hundred thousand dollars the first year.'"4

In early 1977, Jonathan Kwitney, writing in the Wall Street Journal, discussed two separate polls taken by the Indianapolis News -- one poll of its editors and one of its readers, the latter described by Kwitney as a "proper, patriotic, church-going audience" in "much of small town and rural Indiana." Both groups were asked to name the ten top news stories of 1976. In both cases, the presidential campaign

and election ranked first. But while the editors put "revelations of illegal acts by the CIA and FBI" in second place, the readers did not rank the topic at all.⁵

C. CHARGES AGAINST CIA

Between World War II and the U.S. Senate's establishment on 19 May 1976 of a Permanent Select Committee on Intelligence, followed on 14 July 1977 by the institution of a parallel committee in the House, there were a total of no less than sixteen government-sponsored reports, surveys and investigations either entirely or in part aimed at American intelligence organizations, in each case including CIA. Actually, however, a discussion of public issues must focus primarily on the investigative reports produced in response to public concern over evidence, or allegations, of intelligence practices deemed incompatible with the constitutional and legal rights of Americans or with their moral and ethical values and assumptions. There have been four major investigative efforts of this kind, one of which (by the Church Committee of the U.S. Senate)¹ resulted in an interim report on assassination attempts abroad² in addition to a comprehensive report on intelligence activities.³ The other reports centering on constitutional, legal and moral issues were the Katzenbach Report on covert funding of educational and other private organizations⁴ and the Rockefeller Commission's report on domestic CIA activities.⁵ One investigative body (the Pike Committee of the House of Representatives⁶) did not release an official report; an unauthorized version, printed in the Village Voice in New York on February 16, 1976, by definition does not represent the final judgment of either the Committee or the House.

There were, of course, numerous non-governmental investigations, airings and discussions of charges against CIA, notably in the media. To a very large extent, publication of -- and reactions to -- evidence, allegations and interpretations of this sort undoubtedly contributed to the climate and provided the impetus for the investigative efforts by the executive and legislative branches of government.

Stripped of specifics not germane to our discussion, the charges against CIA can be summarized as follows:

1. ACCOUNTABILITY;

a. Because of lack of effective accountability, pursuing courses and taking actions unrelated, or even contrary, to national policy goals and popular/congressional mandates; allowing itself to be misused by the executive.

b. Using the security classification system as a means to deprive the public and the media of information to which they were entitled; as a shield to protect CIA from embarrassment rather than the nation from harm; and as a cover for spending the public's money without the public's consent.

2. ETHICS AND FOREIGN ACTIVITIES;

Using methods abroad -- from violations of indigenous laws and interference in the political processes in friendly and neutral countries to the conduct of military and paramilitary campaigns, association with disreputable individuals

and assassination attempts against foreign leaders -- which contravened American moral codes, standards of propriety and legal understandings and unduly risked hurting the image and prestige of the United States.

3. ETHICS AND DOMESTIC ACTIVITIES:

a. Undertaking massive spying operations against American citizens, in violation of their rights and of CIA's charter as a foreign intelligence agency; intercepting personal mail in the United States, and engaging in illegal wiretaps and break-ins; intervening in domestic politics, and infiltrating domestic dissident groups. Sponsoring tests of behavior-influencing drugs and other behavioral research on unsuspecting persons.

b. Covertly using, and perhaps subverting, journalists, scholars, clergymen and business people and their institutions, thereby hurting their credibility and their relationships. Maintaining improper relationships with other domestic government organs, notably including police.

c. Placing loyalty to CIA and the President above the obligation to respect the law and the Constitution.

D. EMERGING QUESTIONS

In converting our listing of the charges into a definition of the subjects to be addressed, we can apply the same basic categorization: we must examine issues of accountability and ethical conduct -- abroad and in the United States -- as they relate to the relationship between our society and its government's foreign intelligence service. In following this breakdown, we arrive at the following questions:

1. ACCOUNTABILITY:

a. How do we determine the national policy goals that apply to foreign intelligence operations, and how do we see to it that our intelligence arm is attuned to them? In what form and detail, and to whom, should an agency responsible for foreign intelligence be accountable? How can we control CIA, and prevent its misuse by those in authority?

b. How much secrecy is necessary or justified? What needs to be done to make it effective? What needs to be done to keep it from being abused?

2. ETHICS AND FOREIGN ACTIVITIES:

a. To what extent should a foreign intelligence agency, contending with the variously conflicting needs for the effective conduct of its operations and for the support of America's self-image, adapt itself to the ethical precepts of (1) American society, (2) foreign societies, (3) those who practice international intrigue and espionage?

Can its clandestine missions abroad properly include (1) collection of information, (2) attempts to influence foreign public opinion or government policies, (3) promotion of political change, (4) participation in conventional or unconventional warfare operations?

3. ETHICS AND DOMESTIC ACTIVITIES:

a. Which techniques, research methods and types of information collection in the United States are, and which are not, legitimate?

b. What are the proper relationships between CIA and various private groups and individuals, and with other government entities?

c. How should we address possible conflicts between civic and intelligence obligations?

While the charges levied against CIA, and the investigations that followed them, produced some surprises, even among those within the organization who had not been privy to activities outside their assigned areas of responsibility, there is really nothing new or surprising about the issues. Close and thoughtful observers have long been aware of the problems, conflicts and risks attending the institution of a secret intelligence service in our society.¹

As then Senator J. William Fulbright wrote in 1967: "The dilemma posed by the CIA is that, while we cannot do without secret intelligence activities in a world of armed

powers, these activities can never wholly be reconciled with the values of our free society."² As indicated by our public opinion survey, what has varied is not the nature of the problem but the prevailing perspective, and the relative degrees of public emphasis on the conflicts between the needs of an open society and the requirements of a secret intelligence capability. The nature of our discussion -- the stress on charges and on domestic issues, for instance -- inevitably reflects current perspectives.

E. DEBATE OF CURRENT ISSUES

We have seen how the public and some of its spokesmen have wrestled over the years with various conflicting aspects of the fundamental issue: how to maintain a needed intelligence system that performs both effectively and within acceptable legal and ethical boundaries, a system operating in secret but remaining accountable to the people it must serve. For purposes of discussion, we have maintained our break-down into three major elements: accountability (essentially control of intelligence activities versus secrecy and maneuverability), ethics and foreign activities (primarily American versus international standards and requirements), and ethics and domestic activities (mainly established individual rights versus perceived national necessities). The dividing lines between the three major elements are, of course, artificial; many points of controversy have ethical implications and raise accountability questions as well. Our distinctions are nonetheless real, and they are significant.

As we get ready to tackle our topics, a further word about our procedure is in order. In examining each problem principally by offering quotations representing different (and often conflicting) viewpoints, we shall rely on a wide variety of contributors of divergent prominence and authority. A partial listing follows.

Among those usually more or less critical of or concerned about intelligence activities and institutions will be Professors Richard H. A. Blum (Stanford University), Richard A. Falk (Princeton University), Roy M. Fisher (University of Missouri), Stanley N. Futterman (New York University), Irving L. Horowitz (Washington University/St. Louis), Hans J. Morgenthau (New York University), Robert C. North (Stanford University), Harry Howe Ransom (Vanderbilt University), and Jerrold L. Walden (University of New Mexico); others who have political as well as academic credentials, like former Senator J. William Fulbright of Arkansas, former Attorney General and Undersecretary of State Nicholas deB. Katzenbach, historian and former White House official Arthur M. Schlesinger, Jr., Senator Adlai E. Stevenson of Illinois, and former State Department officials Smith Simpson and, with at least one foot in the critics' camp, Roger Hilsman; and various authors, Congressional committee investigators and polemicists, including Richard J. Barnet (Institute for Policy Studies), Robert L. Borosage (Center for National Security Studies), Fred Branfman (Indochina Research Center), Daniel Ellsberg of Pentagon-Papers fame, Morton H. Halperin (Center for National Security Studies), Chicago Sun-Times editor Stuart H. Loory, authors Victor Marchetti and John Marks, Congressional committee staff members Richard Mauzy and Elliot E. Maxwell, Washington political writer Roger Morris, authors Thomas B. Ross and David Wise, long term commentator Jeremy Stone, and the one-time legal director of the American Civil Liberty Union, Melvin Wulf.

On the other side in our pseudo-debate will be intelligence spokesmen, like CIA directors George Bush, William E. Colby, Allen W. Dulles, Richard M. Helms, and Stansfield Turner; such former intelligence officials as Ray S. Cline, Miles Copeland, Daniel O. Graham and David A. Phillips; Professors like Ithiel de Sola Pool (M.I.T.), Ernest W. Lefever (Georgetown University) and Andreas Lowenfeld (New York University); and other writers such as William J. Barnds, [REDACTED] [REDACTED] economist Charles J. Micoleau and former Fortune editor Charles J.V. Murphy.

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Beyond all that, we shall continue to make extensive use, in supporting one side or the other, of the Church Committee's and the Rockefeller Commission's reports, and to cite newspaper editorials as well as individual journalists.

Although the listing may appear extensive, it is neither complete nor based on a scientific sampling of any kind. Many notables with credentials equal or superior to those of some of our sources are not included here. The reason is that we have set out to feature not the debaters, but the debate; and as long as a statement helps to make a point, its origin is considered of little significance. Thus, although we shall name or otherwise identify our sources in the text, we suggest that their arguments be judged on the basis of substantive merit rather than of the authors' identity.

1. ACCOUNTABILITY:

In a democracy, by definition, all power derives from the people. Under our system, the people's power is represented by the branches of government established under the Constitution, and indirectly by the statutory components to which some of that power has been delegated. But in trying to adhere to this superficially simple concept, we face a myriad of complicated situations, interpretations, needs and contingencies.

All of this inevitably has a bearing on our topic and on the questions that have been and must be raised. Who, for example, ought to determine in practice what direction an intelligence system, or agency, should follow and what methods it should and should not use? Who should exercise control over it? How much of its work needs to be secret, and who should share in the secrets? How can secrecy be protected? How can its abuse be prevented?

a. The Public's Role:

Accountability, in Senator Adlai Stevenson's words, means "that ultimately the state should be answerable to the people, rather than the people to the state."¹ In the same vein, Professor Richard Blum recommended recognition of the principle "that foreign policy ... is not the right or property of the State Department, CIA, or the president; it belongs to the people, must be understood by the people, and must be approved by the people."²

Both writers were aiming their remarks at secrecy, a subject we shall take up separately. But the same reasoning leads to the observation, illustrated earlier in our travels through CIA's public history, that acceptance by the public, if not popularity, is an essential ingredient for any viable American institution and policy. "Our foreign policy must be based on ... premises which are accepted by the overwhelming majority of the American people," Nicholas deB. Katzenbach noted in an article in Foreign Affairs.³ Dr. Ernest W. Lefever, in expressing support for CIA, maintained that "perception of external danger is a chief point of reference for judging ... U.S. foreign policy and the instruments used to support it ... An erosion of confidence in the fundamental justice of our foreign policy ... has broken the great American foreign policy consensus that prevailed from 1945 to the mid-1960s." His deduction: "The most severe critics of the CIA are not really against the agency as much as the policies it serves."⁴ Professor Stanley N. Futterman offered a similar analysis without attempting to support CIA: "For almost a quarter of a century, the C.I.A. has enjoyed the tolerance bred of a basic foreign policy consensus ... In the interest of providing the President the flexibility thought necessary to defend the free world ..., the Congress ... has created and tolerated ... the institutional mechanism

to operate outside the law ... Until very recently acceptance of the C.I.A.'s unique position has rested on a deep consensus about our foreign policy goals and requirements. Vietnam has tested that consensus and shattered it."⁵

The debate has focused on institutions and events, but clearly there is more to it. As Professor Robert C. North reminded us: "To a large extent societies are held together by consensus," with all the "many disagreements and differences" that necessarily go along with it.⁶ As we go on to discuss institutional relationships, it will be worth remembering this basic observation.

b. Executive-Legislative Issues:

In 1947, when Congress chartered the Central Intelligence Agency, as well as two years later when it provided a broad enabling statute, CIA was emphatically conceived and treated as an arm of the Executive Branch. Harry S. Truman, who was president when CIA was chartered, was quoted many years later (in 1963) to the effect that he had envisaged no more than a "quiet intelligence arm of the president"; and although he thought the arm had reached too far, he gave no sign of having any doubt whose arm it was.⁷ There was no real question on that score during the years that followed, either. In discussing

control mechanisms for the "intelligence community" -- the aggregation of American intelligence agencies -- Professor Harry Howe Ransom, a long-time analyst of intelligence affairs and CIA critic, put it this way: "The central focus of control is the presidency; Congress plays a secondary role and has not been aggressive in asserting its spending authority or clever in resisting executive branch manipulation and it has been inactive in its role of surveillance over the intelligence establishment. -- The director of central intelligence is in theory both the president's chief intelligence adviser, thus outranking all other intelligence bureau heads, and the administrative director of the Central Intelligence Agency. In both roles he works for the president and the National Security Council. (The NSC has only an advisory role with the president.) -- Thus the intelligence community is under direct presidential authority."⁸

Many critics saw the way CIA was used and directed as a manifestation of the arrogation of power by the Chief Executive. Robert L. Borosage, for instance, once referred to "a new constitutional order already inchoately established in the actions of the postwar imperial Presidency ... The Central Intelligence Agency exemplifies

this imperial constitutional order."⁹ Senator J. William Fulbright, speaking of a "circumvention of democratic procedure" which was "exactly what the CIA, with the full approval of its political superiors, did," called the "CIA affair ... only the most recent manifestation in a long-term trend toward executive predominance in foreign policy."¹⁰ Borosage and Marks traced the decision to "unleash the CIA" in the 1970 election in Chile to Henry Kissinger's and "the Nixon administration's attitude" toward Chile and its Marxist president, and found "no lack of will among high Nixon officials to intervene."¹¹ And Katzenbach commented, in connection with the aftermath of the Bay of Pigs operation, that "President Kennedy's mea culpa related to the failure of the mission, and the later investigation into how the President could be so misinformed. He felt no need to apologize for undertaking so extensive a covert activity on presidential authority alone."¹²

As Ransom noted, "Perpetual conflict amidst cooperation between Congress and the Executive is the inevitable consequence of the American system of government. The existence of a pervasive and highly secret CIA, expending hundreds of millions of dollars annually with only minimal legislative supervision, expectedly has been a thorn in the side of many members of Congress, habitually

jealous of legislative prerogatives under the American constitutional system."¹³ Surely this situation was in the long run affected in a major way by the authority granted to the Executive Branch by Congress, first in 1947, and then in the CIA act of 1949 which, in Futterman's words, "marked an abrupt break with the usual institutional relationship between Congress and the Executive Branch."¹⁴ Precisely what Congress may have had in mind at the time is subject to conjecture. In Ransom's opinion, "Congress intended that all of CIA's statutory basic functions should be related to or of benefit to the intelligence function," and various other activities could be justified only "by seriously distorting the meaning of the term 'intelligence'."¹⁵ The Church Committee, in recognizing and deploring the ambiguities of relevant legislation, particularly in the area of covert actions, concluded that "neither the 1947 Act nor its legislative history ... indicates congressional intent to prohibit" the wider interpretation.¹⁶ Futterman expressed the belief that "the power of the CIA even to collect intelligence on its own does not stem directly from the (1947) Act but from National Security Council implementation of the statutory provision authorizing the CIA."¹⁷

However the statutory questions are answered, observers of different persuasions evidently have seen

CIA's role, for better or worse, in the context of the executive-legislative relationship, competition and conflict. Congress, possessing -- in the Church Committee's words -- "important powers of its own in foreign affairs,"¹⁸ had chartered an intelligence agency. In the process, it had delegated to the Executive a measure of authority which was thought to be necessary but, in the view of some, had been granted at the risk of abridging Congress' own constitutional responsibilities. Over the years, voices were raised in favor of having Congress reassert its rights to some of the disputed territory, notably in the areas of oversight and appropriations. We should see next how Congress addressed itself to this issue.

c. Congressional Oversight:

In a spirit of compromise between the congressional appropriations and oversight functions of the Congress and the Executive Branch's requirements for discretion and flexibility, Congress allowed CIA to conduct its business on Capitol Hill in a low key. The CIA director or some of his aides briefed certain key members of Congress, such as committee chairmen or designated members of small subcommittees, at the legislators' convenience behind closed doors. "Relations between the CIA and the subcommittees," observed the Church Committee, "came to be determined, in large part, by the personal relationship between the chairmen

and the CIA Director, often to the exclusion of other subcommittee members. Staff assistance was minimal."¹⁹ In Roger Hilsman's words: "In Congress, the CIA's natural allies were also the 'inner club,' the power center of Congress ... the men of long tenure and conservative outlook."²⁰ The men in control of congressional procedures deemed it inappropriate for CIA data to go beyond that inner circle, or for the briefings to be given in a more formal setting.

A compilation from CIA files of CIA's contacts with Congress shows that over a five-year period (1967-1972) the agency averaged a mere 26 briefings of individual members of Congress per year.²¹ This arrangement was, of course, not universally appreciated, either within Congress or without, but for a good many years no one was able to change it. As Futterman ascertained: "Over the years some 132 bills had been introduced either to establish standing committees to oversee the CIA's activities or to authorize special investigations of the CIA's role. Not one passed, and only two ever reached the floor of even one house, where both were defeated by better than two-thirds majorities."²² The resolution that developed the greatest momentum was that calling for a Joint Committee on Central Intelligence, a move initiated by Senator Mike Mansfield in January 1955. When

the proposal came to a vote in April 1956, however, after an extensive debate on the Senate floor, it was defeated by 59 to 27. Ransom summed it up: "In the Cold War era of 1956, the attitude seems to have been: 'Trust in God and Allen Dulles.'"²³ But eventually, when the Cold War gave way to a new climate marked by an avalanche of charges and revelations about intelligence activities, the congressional oversight system was destined for a critical review. Said the Church Committee: "If Congress had met its oversight responsibilities some of these activities might have been averted ... no process or procedures have been developed by either the Congress or the executive branch which would assure Congress of access to secret information which it must have to carry out its constitutional responsibilities in authorizing and giving its advice and consent."²⁴ Futterman was more specific: "The subcommittees have had the means to control the C.I.A. if they so desired. The power of the purse enables them, if they choose, to obtain whatever information they need. Their sanction would simply be refusal to pad the budgets of other agencies with funds to be channelled to the C.I.A. ... Whether this power has actually been used is in doubt."²⁵ Two staff members of the current Senate Intelligence Committee measured their words: "Prior to 1975, congressional oversight of

intelligence activities had been spotty, at best. ... By their own choice ... these subcommittees were not particularly vigilant."²⁶ Other critics, like Roger Morris and Richard Mauzy, were less even-handed: "A largely quiescent Congress" was one of the institutions "to surrender their responsibilities in the making of a democratic foreign policy."²⁷ Richard J. Barnet was even less charitable either to Congress or to CIA: "To read the account of the closed hearings ... is to realize that congressional watchdogs are blind and toothless."²⁸ Added Victor Marchetti: "Those members of Congress who possessed the power to institute reforms had no interest in doing so."²⁹

A number of explanations for congressional attitudes prevailing during that period have been offered, in addition to simple references to the Cold War atmosphere. One, cited by Ransom as one of the arguments arising in the Senate debate of the Mansfield resolution, pertained to the Constitutional issue of separation of powers. "It was argued that since CIA undertakes activities only in accordance with National Security Council directives, any Congressional action which seeks to interfere with or pry into this relationship would tend to impinge upon the constitutional authority and responsibility of the President in the conduct of foreign affairs."³⁰ In a more critical vein, the Church Committee called this the

"passive and uncritical acceptance by the Congress of executive decisions in the areas of foreign policy, national security and intelligence activities."³¹ For those in Congress who had jurisdiction but believed it was undesirable to press for access to more information, lack of time was a valid factor. A senior member of Congress once professed orally that he had been wondering how a small subcommittee with high-seniority members, all busy with many time-consuming duties, could cope with anything so formidable in size, talent and variety as the intelligence community. Ransom also found that "most senior Senators have little time to devote to a largely watchdog function."³²

But beyond such more or less functional considerations, there also was a pervasive feeling that, with something as controversial, sensitive and potentially embarrassing as intelligence activities, it was wiser to look the other way. One element of this was articulated by Katzenbach: "The role of critic after the fact is often more politically rewarding than that of a constructive participant."³³ A more widely mentioned element was epitomized by a statement made in 1956 by Senator Leverett Saltonstall and frequently quoted afterward: "It is not a question of reluctance on the part of CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally,

as a member of Congress and as a citizen, would rather not have, unless I believed it to be my responsibility to have it because it might involve the lives of American citizens."³⁴ On the basis of Senate Judiciary Committee records, historian Arthur M. Schlesinger, Jr. noted an equally illuminating observation made by former Secretary of State Dean Rusk in 1971: "I have had the experience of giving information to some Members of Congress who have said to me, gee, I wish you hadn't told me that. I really don't want to know that kind of thing." Schlesinger's own comment: "To a considerable degree Congress over the last generation has remained ignorant about foreign policy because it has preferred to be ignorant. It was better not to be accountable. Few votes were lost by backing the President in foreign affairs, many were gained; and, if things went wrong, it was the President's responsibility."³⁵

But surely, congressional elitism, Constitutional scruples, lack of time and disinclination to assume uncomfortable responsibilities provide less than a full and fair explanation. Unquestionably, Congressional sentiment can to a significant extent be traced to a combination of patriotism and the acceptance of what may be called international traditions. CIA, Roger Hilsman wrote, "had the appeal of patriotism,"³⁶ and making its

activities more widely known would lead to damaging disclosures. "We must remember," Senator Carl Hayden said in the debate on the Mansfield resolution, "that the Central Intelligence Agency carries on its work outside the United States boundaries. Many of its agents are in physical danger." During the same debate, Senator Alben Barkley noted that "some of the information ... was so confidential and secret that the very portfolios ... were under lock and key," and "I would lose my right arm before I would divulge it to anyone, even to members of my own family." Ransom, who found the two quotes in congressional records, also referred to an argument that was "persuasive in the cloakrooms": "The establishment of wider Congressional surveillance over CIA would be disturbing to the principal allies of the United States ... Intelligence units in allied nations enjoy immunity from detailed legislative supervision ... Consequently, a more thorough check of CIA operations by the United States Congress ... would tend to inhibit ... interallied intelligence cooperation ..."³⁷ A parallel thought was expressed many years later in a magazine article by Charles J. V. Murphy: "The CIA has been unique among national intelligence organizations in that it is subject to legislative oversight ..."³⁸ One of the difficulties oversight can bring was identified as recently as in 1978 by one-time CIA Director William E. Colby: "Sadly, the

experience demonstrated that secrets, if they are to remain secret, cannot be given to more than a few Congressmen -- every new project subjected to this (notification) procedure during 1975 leaked ..."³⁹

Encouraged by the record of the Senate's permanent Select Committee on Intelligence, Colby felt, however, "that effective Congressional supervision can be accomplished while the essential secrets are kept."⁴⁰

It can be said that historically Congress saw a need to keep intelligence operations secret and was willing to adapt its procedures to that need, whatever the liabilities of secrecy might be. To many, that was the essence of sound pragmatism. But others focused their attention on the issue of secrecy itself which, indeed, was an inescapable dimension of the accountability problem.

d. The Secrecy Issue:

We cannot presume in this framework to explore the question of secrecy in a democracy in its fundamental sense, a subject that has long fascinated historians, political scientists, legal scholars and many others and has been addressed in depth by numerous writers. What concerns us here might be summarized with a quote from the Church Committee report: "Secrecy is an essential part of most intelligence activities. However, secrecy undermines the United States Government's capacity to deal effectively with the principal issues of American

intelligence ... Secrecy has shielded intelligence activities from full accountability and effective supervision ..."⁴¹ Even in this narrower dimension, the problem has been a popular topic with both analysts and polemicists -- too popular for thoroughgoing treatment of the available references in this space.

(1) Arguments Against:

What have been the arguments stressing what the Church Committee called the "undermining" effect of secrecy?

For one thing, the critics have said, it has led to the deception of the American public. As Katzenbach phrased it, "however justified by ... necessity, secrecy destroys our democratic process when it also deceives the American public on important and controversial matters."⁴² A British journalist with previous government service noted in an international forum that "the power of Government to deceive is so immense that fooling all of the people some of the time can successfully and easily lead to fooling them all the time."⁴³ Another experienced British observer saw danger in the "fact that Secret Service work has a false romance ... that often obscures objectivity and clouds political judgment."⁴⁴ Marchetti and Marks took specific aim at CIA: "Knowing nothing

has meant that the public does not even realize how frequently the CIA has failed."⁴⁵

Loss of credibility has been seen as a corollary effect. "Secrecy," said Schlesinger, "... exacted a psychic price. When government fell into the habit of falsification, how could anyone ... be sure what was true? ... Government by night and cloud after a while eroded its own basis of consent."⁴⁶ "Secrecy and deception also sow ... mistrust and cynicism in the press," Roger Hilsman wrote, and "doubt about the truthfulness of the official statements of its own government."⁴⁷ Thus, Morton Halperin and Jeremy Stone reasoned, "the United States government cannot credibly deny involvement in dramatic attacks or incidents abroad."⁴⁸

In many cases, it has been argued, secrecy has been a hindrance rather than a help. "The hindsight of history suggests that many secret operations were ill-advised or might have been more beneficial to United States interests had they been conducted openly, rather than secretly," the Church Committee concluded.⁴⁹ Halperin and Hilsman were among those contending that secrecy was a major factor in the failure of the Bay of Pigs operation. In Hilsman's words: "Because of secrecy, men and women who had knowledge that could have contributed to the making of sounder judgments ... were excluded

from the discussions."^{50*} Secrecy may even inhibit criticism by those privy to secrets, said Halperin, because "an individual ... finally ... cleared ... knows he will continue to be involved only if he accepts the basic principles involved and presents his criticism on the edges of particular details ..."⁵¹ Security measures "may have the effect of silencing valuable criticism of official policies or inhibiting creative but unorthodox ideas," North added in a comment that he applied to government secrecy in general.⁵² North also saw a related problem in that "... walls of secrecy may serve as barriers to useful flows of information," often in terms of "arbitrary control of information."⁵³ Using a more positive formulation, Sir Kenneth Strong, whose credentials include service as wartime intelligence chief under General Dwight Eisenhower's command, suggested: "Perhaps the ideal agency would be one which ... made available as much information as possible on given subjects for more general consumption."⁵⁴

*Participants in the Bay of Pigs episode have contended that they were handicapped, rather than helped, by discussion, judgment and intercession from the outside. David A. Phillips, CIA's propaganda chief during the operation, made a case for this in Chapter 4 of his book, The Night Watch.

It is hard to keep a leash on secret activities, or anticipate the eventual impact, some commentators have charged. When, for instance, "commitments are undertaken indirectly and without full debate, it is difficult for anyone to be sure where they will lead," Halperin and Stone observed; and "when foreign countries are aware ... and the American public is not, the possibility arises of having our government blackmailed by foreign governments."⁵⁵ And Katzenbach spoke of "the impossibility of controlling secret activities, and the public's apprehension about them."⁵⁶

For some, it has been a small step from the observation that secrecy is bad to the conclusion that disclosure is good. David Wise and Thomas B. Ross maintained that "open discussion is some sort of safety valve."⁵⁷ Melvin Wulf, former legal director of the American Civil Liberties Union, went further: " ... disclosure of 'secret' information is rarely harmful because the decision inside government to classify information is notoriously frivolous ... But not only is disclosure of 'secret' information generally harmless, it is a tonic that improves our nations's health."⁵⁸

Beyond the question of desirability lies that of the legality, or Constitutionality, of the secrecy practices. Daniel Ellsberg once asserted: "The classification system as it now exists and is practiced is unconstitutional. I believe a classification system could be devised to meet the constitutional test of compatibility with the First Amendment."⁵⁹ Another question more concretely linked to the accountability problem is that of secret funding of intelligence activities, as authorized by Congress in the CIA Act of 1949, in the face of the Constitutional clause which provides: "No money shall be drawn from the Treasury, but in consequence of Appropriations made by Law; and a regular Statement of Account of the Receipts and Expenditures of all public money shall be published from time to time."⁶⁰ A number of scholars, among them Futterman and Elliot E. Maxwell, who discussed this apparent conflict in depth without really resolving it, came to the not surprising conclusion that the Constitution as well as congressional responsibilities called for less secrecy and more disclosure than previously practiced.⁶¹ A suit brought by a private individual, claiming a Constitutional right to information on

secret funding, was rejected by the Supreme Court in 1974 by a 5-4 vote, but only on the grounds that a mere taxpayer lacked "standing."⁶² Edward S. Corwin, an authority on Constitutional questions, concluded that "lump sum grants ... to an executive agency do not violate the maxim against delegation of legislative power ... because appropriation acts are not 'laws' in the true sense of the term." However, he did not go into the question of camouflaged appropriations.⁶³

Secrecy has been described as a tool of power, threatening to alter normal institutional relationships and abused by the self-serving to acquire prestige and cover mistakes and offenses. "The existence and growth of an enormous secret intelligence bureaucracy alters the power arrangement -- on the assumption that knowledge is power," Ransom wrote.⁶⁴ "Secret information needs very little polishing to become a tool of power," noted North.⁶⁵ "Because the secrecy system was controlled by those on whom it bestowed prestige and protection, it had long since overridden its legitimate objectives," Schlesinger concluded.⁶⁶ "Secret government becomes arbitrary and undemocratic," a British journalist

found.⁶⁷ "'Secrecy for the mere sake of secrecy' invites abuse and prevents Congress and the nation from 'knowing whether we have a fine intelligence service or a poor one,'" Ransom quoted from a Senate committee report on the arguments used in the debate of the Mansfield Resolution.⁶⁸ "Classification of information ... can be used ... to cover mistakes, avoid outside criticism, or enhance personal authority or power," North warned⁶⁹

In a more general comment, columnist Anthony Lewis made the observation that "secrecy and lawlessness work together in the United States. The more public opinion can be kept inert, the better chance there is that abuse of official power will go uncorrected."⁷⁰ Barnet was even less charitable: "The fundamental reason why the secret-war bureaucracy threatens the rule of law is that by all democratic norms it is inherently a criminal enterprise. Perjury, subornation, torture, property destruction, assassination, fraud, impersonation, and a variety of other acts for which ordinary citizens go to jail become the dictates of duty. The reason that the activities of the intelligence underground are shrouded in secrecy is that they violate some accepted principle of constitutional or international law."⁷¹ And Ransom made his point with a

modified adage: "Secrecy corrupts; absolute secrecy corrupts absolutely."⁷²

We should not end our exposure of views on the evils of secrecy without citing a British observer who had a different angle: "When secret services do well they get very little credit, and when they make a boob the sky falls in!"⁷³ President Eisenhower said as much in November 1959 at the dedication of the CIA building at Langley; and it is still being said at that site.

(2) Arguments in Favor:

What have been the arguments for secrecy as "an essential part of most intelligence activities"?

Allen Dulles gave what has become a classic answer: "Any investigation ... which results in a disclosure of our secret activities and operations or uncovers our personnel would help a potential enemy ..."⁷⁴ Many subsequent comments have similarly called for more awareness of the nation's potential enemies. When he was still CIA Director, Colby once told a hostile audience: "It is a strange anomaly that our country makes publicly available vast amounts of material on the U.S., whereas the corresponding material about our potential adversaries must be

collected by intelligence techniques at a cost of hundreds of millions of dollars. In this situation, if we cannot protect our intelligence sources and methods, I fear we may reach a situation in which our adversaries profit from our openness while we are blinded by their secrecy."⁷⁵ And in a magazine article, Colby quoted President Ford as once having said "he would gladly share our Government's secrets with all 212 million Americans, if such information would go no further."⁷⁶

General Daniel O. Graham, who as a one-time CIA official and Director of the Defense Intelligence Agency qualifies as an intelligence spokesman, raised the problem of intelligence sources who "cannot but view with alarm the public exposure of U.S. intelligence activities. Simple self-preservation will cause many sources to put distance between themselves and U.S. intelligence contacts. Worse, for the long run, is the sharply increased reluctance of potential new sources to have anything to do with U.S. intelligence in the future."⁷⁷ Colby similarly felt that "The public does not 'need to know' our secret intelligence sources ... at the risk of drying them up."⁷⁸ On another occasion, he put it more broadly:

"Intelligence by its very nature needs some secrets if its agents are to survive, if its officers are to do their work, and if its technology is not to be turned off by a flick of a switch."⁷⁹ One of Arthur Schlesinger's observations, made in a somewhat different context, also applies to the ability of officers to do their work: "Publication ... might discourage frank and honest writing in the bureaucracy."⁸⁰

The question of cooperation with other nations has remained very much alive. "A number of cooperative foreign officials," said Colby at one point, "have expressed great concern to me as to whether they can safely continue to pass their sensitive information to us ..."⁸¹ Elsewhere, Colby raised the question of commitment: "I have given very firm assurances to a lot of people ... that their names will not come out. Now I have got to carry out that assurance or we are not going to get people to work with us ... I certainly don't want to chase any more away."⁸²

Former CIA official Ray S. Cline found that secrecy had been indispensable in a number of significant intelligence feats, among them the procurement of Khrushchev's secret speech to the Twentieth Communist Party Congress in Moscow which changed

Soviet history -- an accomplishment Cline called "one of CIA's greatest coups of all time."⁸³ Cline saw another advantage to secrecy in an area where it currently has few advocates: It "also protects any American from injury by public revelation of reports that could not be substantiated."⁸⁴

Beyond the advantages of secrecy in certain endeavors, many minds have stressed -- or conceded -- the necessity of it in other ways: if some things are not done secretly, they cannot be done at all. Professor Ithiel de Sola Pool provided one example: "If our government needs contact with oppositionists in certain foreign countries, they must be 'unavowed.'"⁸⁵ And, said Allen Dulles, at times it is necessary "simply to confuse the opponent about one's plans and purposes."⁸⁶

Then there is the view, perhaps most graphically expressed by a British Member of Parliament, that the government's reputation might be more important than the revelation of missteps: While conceding that "Governments do undoubtedly abuse their right," he nevertheless maintained they "undoubtedly keep secret the mistakes and errors or divisions of opinion ... in order not to undermine the authority

of the Administration and perhaps weaken its international standing. A Government that could not keep such secrets might well find that other nations became increasingly reluctant to confide their own secrets to it."⁸⁷ We might also quote related statements by two American writers: William J. Barnds' contention that "the public revelation of these weaknesses ... hampers CIA (and the U.S. Government) by limiting those willing to cooperate with it,"⁸⁸ and Lefever's reference to "the decision whether the disclosure of certain classified information would or would not harm the national interest."⁸⁹ And John F. Kennedy, in what Schlesinger called "the worst and most inexplicable speech of his Presidency," suggested that "newspapers must ask not just the question, 'Is it news?' but the question, 'Is it in the interest of the national security?'"⁹⁰

One common denominator for all those statements was formulated by Charles Murphy: "We should ... be asking ourselves whether the U.S. can remain a free, democratic society without the kind of secret organization that the CIA has to be in order to do its job effectively."⁹¹ David Phillips put it succinctly: "Macy's window is not the place for secret operations."⁹²

(3) Balance:

Although most comments on secrecy have been weighted in one direction or the other, few have failed to include some qualification, or grant merit to opposing views. Thus Ransom, although wary of the effects of secrecy, said: "Admittedly, government leaders or officials with legitimately secret information should not discuss it publicly."⁹³ Elsewhere, he noted: "Public relations aside, central intelligence inevitably must remain in essence a silent service. This is so because, in part, it is a staff arm of the presidency; in part, because it deals in the shadowy realm of espionage and backstage foreign political action."⁹⁴ He also found the "existing super-secrecy about ... CIA operations overseas has the necessary advantage of protecting such activities from exposure that would rapidly dry up sources of vital information. Yet it also has the effect of arousing public and Congressional suspicion."⁹⁵ Schlesinger made it clear that "the Federalist interpreted the Constitution as a command to executive secrecy ... in 'the business of intelligence,' where 'the most useful intelligence may be obtained if the persons possessing it can be relieved of the apprehensions of discovery.' The arising

democratic society, however, nourished the opposite principle -- the principle of disclosure ... The executive, of course, did not and, in its nature, could not surrender the claim to secrecy on certain matters."⁹⁶ Searching for a compromise, Borosage came up with the following: "Perhaps, as Judge Haynsworth suggested, secrecy is an executive function: the executive should try to keep secrets, and the press and people should try to expose them. Neither criminal nor injunctive sanctions should disturb this struggle. No doubt, this may not meet the requirements of a clandestine agency. Again, the dictates of a clandestine agency seem to conflict with the principles of a healthy polity, founded on the consent of the people."⁹⁷

On the other side of the ledger, Colby tried to distinguish "bad secrets," which deserved exposure, "non-secrets," which deserved release, and "good secrets," which deserved protection.⁹⁸ He also allowed that time made a difference: "When CIA was established in 1947 ... it was ... believed necessary to sacrifice oversight for secrecy. Our society has changed, however ... U.S. intelligence has already moved out of the atmosphere of total secrecy ... We ... are well

aware of the need to retain public confidence and congressional support ..."⁹⁹ Charles Murphy, in deploring CIA-connected disclosures, nevertheless acknowledged "the pervasive mistrust of government secrecy."¹⁰⁰ And General Graham conceded: "It is hard to convince a newsman that he should respect a classification stamp if he has seen it too often on trivia."¹⁰¹

To some extent, this adds up to a search for what the Church Committee has called "an equilibrium of publicity, privacy, and secrecy."¹⁰² But it is primarily a reflection of the more obvious fact that most people can agree on the need for secrecy, but not on the protection, control or -- most importantly -- definition of legitimately secret matter, nor on the constitution of a proper equilibrium. The same disagreement extends to the question whether, or to what degree, CIA has been operating in the appropriate governmental framework or, under the protection of secrecy, has acquired the status of an independent force which, in Senator Church's celebrated phrase preceding his committee's findings, would have given it the character of a "rogue elephant." Much of the discussion of problems and controls rides on either implicit or explicit answers to this question.

e. The Issue of Control:

In formulating the position of those who attack CIA, Young Hum Kim (California Western University - USIU) described it in part as follows: "The CIA has come to constitute a mini-government, an 'invisible government,' or a 'fourth branch' of government which operates a clandestine organization. Evading congressional scrutiny, the CIA budget is kept secret, except from the Bureau of the Budget, the National Security Council, and the relevant congressional committees. The CIA's expenditures are undisclosed, buried in the fiscal labyrinth of the Department of Defense. In addition, the number of its staff is unknown. The CIA independently formulates and executes foreign policies which some see as clearly in the domain of the Department of State. The performance and efficiency of such activities, cloaked in secrecy, frequently run counter to policy goals of the State Department."¹⁰³ Going beyond that, Marchetti once maintained that "the CIA has gotten us into wars in the past ... and it is going to get us into future wars if there are not drastic changes ... The men who run the Agency are powerful figures. They do not want to be reviewed. They do not want to be controlled, and they are going to resist reform in every possible way."¹⁰⁴

"For almost a quarter of a century, the CIA has conducted ... the subliminal foreign policy of the United States," Jerrold L. Walden maintained. "In doing so, it has pursued a deliberate course of aggression, assassination, revolution, and other direct and indirect acts of intervention ... The CIA is unique in the history of free democratic institutions ... there are no limitations on the expenditure of funds it does receive from other agencies. Moreover, the CIA is perhaps the only instrumentality of the United States government that is not publicly accountable for its policies."¹⁰⁵ Smith Simpson, a one-time foreign service officer, charged that CIA "supported Indonesian rebels against Sukarno while State was trying to work with Sukarno."¹⁰⁶ Similarly, Professor Irving L. Horowitz saw a "pattern of conflict and competition between the State Department and the CIA."¹⁰⁷ In terms of operations, a British observer, speaking in conceptual rather than national terms, found "nearly always lack of communication between the Services themselves and those in control of them. Operations have been initiated without political clearance, or operations have been submitted for clearance without revealing all the risks."¹⁰⁸ Marchetti and Marks also traced the lack of effective control to "a built-in conflict of interest in the system:

the CIA draws up the intervention plans; the CIA is the only agency with the specific knowledge to evaluate ... those plans; and the CIA is the action arm ..."¹⁰⁹ Wise and Ross wrote that "the President, perhaps the busiest man in the world, cannot be expected to give detailed scrutiny to every CIA operation; some things must be delegated and the Special Group was set up for that purpose. On the other hand, the control machinery is demonstrably defective if presidential approval and oversight are not solicited and obtained for operations that run the risk of grave national danger or humiliation."¹¹⁰ Even Ransom felt that "probably no other organization of the federal government has taken such liberties in interpreting its legally assigned functions as has the CIA."¹¹¹ Finally, Barnet expressed the thought that "a criminal enterprise, such as the 'dirty-tricks' department, does not respond to ordinary political controls because it is made up of people who have been trained to respect no law but the command of the superior,"¹¹² leaving it open to question whether he was complaining about too little susceptibility to control or too much.

CIA has consistently and vigorously denied the "rogue elephant" theory, and many other quarters -- including the Pike Committee, according to its unofficial

report published in the Village Voice¹¹³ -- have refused to accept it. "CIA," wrote Barnds, "is neither invisible nor a government ... CIA has always secured approval from the senior policy-makers before initiating covert political action."¹¹⁴ Colby agreed: "The Agency conducts such activities only when specifically authorized by the National Security Council. Thus, CIA covert actions reflect national policy."¹¹⁵ "CIA got a lot of credit, which it only partly deserved," Cline said, "and much later was to get most of the blame when covert action programs got out of hand -- blame that also largely belonged to the policymakers, not to the instrument of covert action, CIA."¹¹⁶ Phillips recounted in some detail how directly two of our Presidents had managed and controlled CIA's actions in Guatemala and Cuba.¹¹⁷ General Graham explained that "it is often useful to provide the President and his principal cabinet officers a means short of flat lying to deny responsibility or even knowledge of a specific covert action that goes sour"; but "the notion that the CIA would decide to assassinate the Cuban dictator and keep the White House in the dark about it is preposterous."¹¹⁸ Even Marchetti and Marks referred to our Presidents "who are always aware of, generally approve of, and often actually initiate the CIA's major undertakings."¹¹⁹ The Church Committee report acknowledged that

"the suggestion for the initiation of covert operations did not originate in the CIA, but with senior U.S. officials ... The decisions were gradual but consistent, spurred on by the growing concern over Soviet intentions."¹²⁰ And again the Church Committee: "Ultimately, much of the responsibility for the scale of covert action and for whatever abuses occurred must fall to senior policymakers. The decisionmaking arrangements at the NSC level created an environment of blurred accountability which allowed consideration of actions without the constraints of individual responsibility."¹²¹ As to the supposed policy conflicts between the State Department and CIA, a writer with experience in intelligence work, adduced evidence that "both secret intelligence and secret political action continue to be related intimately -- and universally -- to the conduct of foreign affairs. If there are still American ambassadors who do not know this, their numbers are dwindling."¹²² Fred Branfman, author of numerous articles on America's role in Indochina and severely critical of CIA activities there, perhaps unintentionally appears to have provided something of a rebuke to the "rogue elephant" theorists: "CIA ... became a largely professional, apolitical, amoral, technically oriented force of mercenaries who...were largely

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impervious to public opinion, and were obedient to orders from above ... no President can be trusted with his private secret police and military force, which he can count on to carry out his orders obediently ..."123 This would bring the issue back to the problem of controlling the Executive Branch, rather than CIA. An observation by a British expert, not quite in the same focus, is nevertheless germane: "In the last analysis ... the truth is that Secret Services are as competent or incompetent as the governments who control them."124 And, we might add without having a quote to rely on, as involved or uninvolved in any activity as the governments want them to be.

f. The Search for Solutions:

As we have seen, the terms of reference used by those discussing accountability have not been totally consistent, particularly in tackling the question of the Executive Branch's role in decision-making versus CIA's. Whatever the approach, however, the part played -- and to be played -- by Congress has been a key element of consideration. Congress was being widely accused of -- and was blaming itself for -- lack of vigilance. It was logical to look upon invigorated congressional surveillance as a need and as a solution, and to seek the elimination

of obstacles to congressional oversight of intelligence activities. Thus secrecy provisions had to be circumscribed and delimited. CIA was to become more responsive -- and more accountable -- to Congress.

More has been said over the years about the advantages and disadvantages of congressional oversight. With the establishment of the Senate's permanent Select Committee on Intelligence in 1976 and the formulation of a parallel committee in the House, the debate has lost intensity and changed complexion, even if it has retained its basic characteristics.

The principle of congressional oversight was spelled out by Ransom many years ago: "Control should remain primarily a responsibility of the Presidency, but Congress also must assume a more carefully defined and active surveillance role."¹²⁵ Congress has come to the same conclusion, and has decided to begin a new chapter in the history we sketched in our section on "Congressional Oversight." But although the difficulties of active congressional control functions were no longer to be evaded, it did not follow that they had ceased to exist. Here are some comments from earlier days, but not without current significance. (By de Sola Pool:) "It is questionable practice to formally involve some congressmen in executive

branch secrets not open to others. From time to time some constituencies of American voters quite properly elect representatives who could not pass a security test. Should the Congress formalize the discrimination between those of the people's representatives who can be cleared and those who cannot? Furthermore, it is always questionable how far and in what ways congressmen should be co-opted into executive branch activities."¹²⁶ (By Futterman:)

"The members of the subcommittees, saddled with classified information which they cannot share with other members of Congress, might also as well be additional members of the Executive Branch. The members ... have accepted the anonymity that traditionally belongs to committees of the Executive Branch";¹²⁷ (By de Sola Pool again:) "Considerations of secrecy preclude a normal congressional review of the details of the CIA's budget and of its activities; congressmen are not and should not be noted for sealed lips."¹²⁸ (By Barnds:) "A ... Committee would ... create ... pressure on CIA to adopt a cautious and bureaucratic approach in a field where imagination and flexibility are important qualities."¹²⁹ The old separation-of-powers issue mentioned in the "Congressional Oversight" section above also remains potentially troublesome.

In the interest of effective oversight, Congress has tried to find the most suitable ground for adapting

its procedures to its needs. Senate Resolution 400, which established the Permanent Select Committee, provided that all departments and agencies within the intelligence community should keep the Committee "fully and currently informed" about any intelligence activities, including "significant anticipated activities." "The idea that a permanent Senate committee should be privy to essentially all information about U.S. intelligence activities is a sharp break from past practice, in which the Executive branch decided what information to give Congress," two staff members of the committee observed.¹³⁰ Provisions for a long-term but rotating membership system can be seen as an assurance of restricted access as well as a deterrent to co-optation. Far from eliminating secrecy, the Committee has instituted stringent rules for membership and staff; and while the Committee has the right, inter alia, to go public, it has only sparingly resorted to it. The Committee's goals cover a wide range, including the drafting of charters and rules and the full protection of "legitimate national secrets." As Senator Huddleston, a member of the Committee, described the Committee's approach to the conflict between public accountability and secrecy: "Because of the nature of intelligence activities, a full public accounting is impossible. But that does not mean that accountability is impossible. New means must

be developed to provide surrogate procedures as a substitute for the open discussions of governmental activity possible in other, less sensitive areas."¹³¹

While the Committee appears to have been remarkably successful in keeping its secrets, the discussion of what a legitimate secret is, and how disclosure should be prevented or dealt with, has not changed much over the years. An interesting definition was tried by a British observer: "In secret operations there are only two degrees of security. One is the suit of armour, where the man's identity or objective remains a total secret. The other is the fig leaf, where a facade of respectability is imposed on functions or individuals whose real purpose is widely known and accepted. Security trouble arises when it is believed by those who control them that there are degrees of security in secret operations between the suit of armour and the fig leaf."¹³² Halperin and Stone thought we "should continue to conduct operations involving the collection of intelligence materials by technical means, but not in any greater secrecy than other government activities."¹³³ Regarding enforcement of secrecy provisions, Lefever recommended the enactment of legislation "to deter unauthorized disclosures of sensitive and classified information by present or former government employees or by members of Congress," adding

that "our First Amendment would make it difficult for us to pass a law similar to the British Official Secrets Act which provides criminal penalties for any person ... who transmits 'any official document issued for his use alone' to an unauthorized person."¹³⁴ Meanwhile CIA, in cooperation with the Department of Justice, went to court against Victor Marchetti and John Marks in a difficult but successful attempt to establish the validity of the secrecy agreements signed by present and former employees; but the government had no provisions for sanctions against violators of the agreement, like Philip Agee.¹³⁴ The First Amendment, to which Lefever alluded, has of course protected those -- mainly the media -- who have chosen to divulge secret information passed to them; and although Ransom predicted "restraint -- even self-censorship -- when this is seen to be in the national interest"¹³⁶ and Schlesinger thought that "newspaper abuse of disclosure would turn public opinion against the press,"¹³⁷ any agreement on what secrets deserve to be kept and what safeguards should be maintained has proved to be elusive.

g. Accountability -- CIA's Position:

CIA's position can be summarized as follows: First, it is a myth that CIA, or its leaders, tried to be an independent force, charting its own course and pulling the rest of the government and the nation along. Even when the Cold War temperature reading was at its lowest point, CIA saw itself as performing the mission that was expected of it, and as fashioning and wielding the tools that were called for, but not as determining what the mission should be. We might recall here that the National Security Act of 1947, in the phrase that critics have regarded as the original license for abuse of powers, authorized CIA to "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct," not as CIA may direct. There is abundant evidence that CIA was, and has consciously striven to remain, an instrument rather than a maker of administration policy, even though it is understandable that this was not clear to segments of the public and the media.

If there ever was a legitimate question for those informed of the facts in the matter, it was not whether but to whom CIA was accountable, and whether the instrument was used properly -- and wisely. Another question might

be whether CIA did or did not always read its directions correctly and followed them with sufficient care. A third question that has been raised is whether CIA should not, in a bit of a twist of the accountability concept, have more often defied its superiors in the Executive Branch by refusing to do some things.

CIA was in the past, and will continue to be, a component of the Executive Branch. Through the Cold War, the consensus dominating both Congress and the Executive Branch was that the nation needed a device to do unconventional and, if need be, disagreeable things which, by their character, had better be kept under the table of official and public accountability and ought to be protected rather than delimited. Within and without CIA, the problem then was not whether CIA ought to do unconventional and disagreeable things when the occasion demanded it, but whether it would be tough enough to meet the demands. Congress tried to help by signalling its willingness to keep from interfering with Executive decision-making. Under the circumstances, it was uniquely obligatory for CIA to keep itself as fully accountable to the Executive leadership as humanly possible, and to surmount rather than raise obstacles of various natures -- physical, legal or moral. CIA saw its role, as did administration decision-makers, in finding ways rather than drawing lines, and in

protecting Government leaders from undesirable fall-out rather than defying the leadership with negative attitudes.

It would be unreasonable to assume that CIA, in attempting to implement policy decisions, made no errors of judgment, that somewhere in its ranks lack of perception, excess of zeal or other human failings did not take their toll, or that activities once begun did not at times develop their own momentum. But in terms of significant decisions and major policies, CIA was never out of tune with its administrative leadership. The idea that it would have gone off on major policy departures on its own, in defiance of Executive wishes, is as preposterous to those who were and are informed as it is sensational and shocking to an uninformed public.

In the light of hindsight, most of CIA's former directors would probably agree that it would have been better for them, when faced with demands based on an excessively wide interpretation of CIA's charter, to have resisted more strenuously or more often. The record shows that resistance did occur; but resistance was basically not the name of the game, and unreasonable demands, in any case, touched only a very minor portion of CIA's activities. (This leads beyond the accountability problems as defined here into questions of ethics, which will be taken up separately.) Often enough, CIA voiced objections to

suggested alternatives, but -- appropriately, it seemed -- on grounds of feasibility rather than principle. In retrospect, as David Phillips suggested in his account of the Bay of Pigs episode,¹³⁸ even objections of that kind may not have been raised frequently enough. But those are questions of judgment rather than accountability.

Congress had chartered CIA and defined its functions; it had an oversight role to play and, in its chosen way, remained part of the proceedings. Secret actions, Colby once said, "should be reported to the Congress in the manner that the Congress establishes."¹³⁹ It can hardly be otherwise. Former CIA directors undoubtedly shared with the Executive leadership a desire to have no more than a minimum of Congressional oversight; but Congress was guided by its own preferences, just as it is today.

Oversight, of course, was not -- and is not -- the equivalent of command; no agency, including CIA, can serve two masters. Yet the Congressional/Executive relationship did spawn potentially conflicting obligations that were added to the other conflicts inherent in the intelligence function. Thus CIA, and its directors, had a difficult job to do, one demanding a combination of unconventional thinking and personal integrity, flexibility and compliance, daring and discretion. This, it is safe

to say, was less a privilege than a responsibility and a burden -- one that might have been easier to bear if it had been more clearly delimited, and certainly would have been if the powers that were had established more of a common denominator. Effective oversight means shared responsibility, clear signals and visible boundaries; constructive oversight means protection, correction and, when warranted, support. CIA will live and breathe a lot more easily with effective and constructive oversight than it did under conditions of blurred responsibility.

The new congressional oversight system was begun with the formation in 1976 of the Permanent Select Committee on Intelligence of the U.S. Senate, followed in 1977 by the establishment of a House intelligence committee, and based on provisions embodying a constructive approach to the problem. CIA hopes that type of approach will prevail and will be backed by the public and its leaders, and will combine balanced views, vision, understanding and resolution.

CIA realizes that there must not only be a clarification of ground rules, but also changes in its way of doing business. This applies in particular to questions of classification and secrecy. A good bit of information can be disclosed without harm to legitimate national or

individual concerns; some of it, such as general-interest studies, should prove beneficial in the public domain and does not require the protection of a security curtain. Beyond that, since CIA is underwritten by the public and needs public support, it logically ought to give the public whatever it can without hurting the public's own ultimate interest. The process of releasing more suitable information has begun and will continue. Admiral Turner, in particular, has committed himself to this.¹⁴⁰

Yet there is the other side of the issue which, CIA fervently hopes, will not be neglected in the formation and application of the accountability rules. In its most basic form, it is the simple fact that public information, by definition, is available to both foe and friend, and that secrecy protects as well as conceals. The developing accountability provisions must not, either in the short or long run, lead to the exposure of sources or collaborators -- past and present -- who have been promised the protection of their identity, for as long as they count on it; otherwise there will in the future be no sources and no collaborators worth having. There must be no disclosure of sensitive operations and methods; otherwise both will be useless and might be turned against us. The lives and well-being of CIA's officers must not be jeopardized; for one cannot serve the nation if it

fails to protect its servants. It must be understood by those with the power or the means to disclose that disclosure -- and especially partial disclosure -- is not invariably beneficial; it can hurt the innocent, violate privacy, lead to misunderstanding and distortion, and be used against the nation. Secrecy, properly applied, can be a need and a blessing on all those counts; indeed, much of the information collected secretly for intelligence purposes in the past, whether actually or merely potentially useful, was not damaging to anyone -- as long as it was protected. It must also be understood by those in authority that it can be risky even to reveal the absence of sensitive activity in certain situations; for the failure to deny such activity in a parallel situation will then become a confirmation. Finally, it must be realized that CIA's first requirement is to operate effectively and productively, not to disclose -- that, indeed, the agency may be fatally hampered if an unreasonable portion of its limited resources is regularly diverted from necessary and primary tasks to the satisfaction of pointless, misguided or malevolent curiosity.

The burden of CIA's contentions, as expressed here, is that the accountability system, concerned as it must be with the prevention of potential abuse, must

eventually grant priority to the need to maintain an effective intelligence service, to leave its practitioners with the proper tools in hand and to protect them when they do what they are supposed to do. Knowing as it does its own people, their motivation and their outlook, CIA is confident that responsible oversight will serve to help in maintaining the nation's intelligence effort.

CIA cannot, of course, any more than anyone else, resolve the conflicts between secrecy and public accountability which have now shifted to a different forum, but have not disappeared. It is relieved that Congress, far from representing merely one side in an adversary relationship, has accepted the task of reconciling some of those conflicts. CIA recognizes, of course, that there are interests other than its own. It probably should not offer prescriptions on how the protection of secrets, for instance, should be squared with that of the First Amendment right -- or, as some see it, the duty -- to disclose. But whatever compromises are made, under no circumstances can CIA concede to its own staff and others privy to its work the right to break their pledges of secrecy in favor of whatever conflicting rights may be claimed. Those with obligations to CIA, too, must be held accountable.

In CIA's business, the road is expected to be rocky, although, it is to be hoped, less so than the road behind. Much has been learned, in CIA and elsewhere, about principles, possibilities, pitfalls and compromises. Even partial solutions to fundamental conflicts are often difficult. But, as both the President and Congress know only too well, such solutions must be pursued if a viable intelligence structure, accountable to the representatives of the people, is to exist. And the need for its existence is no longer in dispute -- if it ever was -- among those who feel and carry responsibility.

2. ETHICS AND FOREIGN ACTIVITIES:

When we speak of CIA as a foreign intelligence agency, we mean, in essence, an agency with operating responsibility and interests abroad, but anchored in our domestic institutions. While it is fundamentally not concerned with domestic affairs, it is bound by domestic considerations in two ways: it is committed to the support and protection of our nation's welfare, and, in turn, it needs support from and protection of its domestic environment. In collecting information and supporting national policy objectives abroad, it must work with -- and against -- people and institutions with ethical standards widely divergent from ours as well as each other's. In planning, guiding, supporting, protecting, and implementing its activities abroad and in doing centralized research and analysis, it must work in the United States with individuals and institutions willing and able to support its foreign intelligence missions. This, at any rate, is the conceptual framework in which we propose to examine the question of ethical practices and requirements appropriate for an American agency working in the field of international intelligence.

a. Morality versus Expediency:

In discussing what he called "the conflict of values," Ithiel de Sola Pool addressed the question as follows:

"Science is good; so is wisdom; so is knowledge. Prying is bad; so is spying. Education is good; so is communication. Indoctrination is bad; so is propaganda. Privacy is good. Secrecy is bad. So at least folk wisdom asserts. But what are the distinctions? When does the search for knowledge become prying? When does communication become propaganda? When does privacy become secrecy? These issues of values bedevil our foreign policy, and always have done so. No issue has troubled Americans more than the conflict of morality and expediency in 'foreign policy' and in no area has the conflict been more disturbing than that of international information or, in other words, intelligence. A sensible foreign policy must be based on knowledge, but knowledge is sometimes come by in ways that raise grave moral questions." The same author then asked: "How can a democratic government which has to reflect the moral values of its citizens handle the need to act effectively in the lawless cynical world of nations that do not share those values?"¹

Among those weighing in on the side of placing moral above pragmatic considerations was Professor Ransom, describing himself at one point "as a citizen preferring democratic values and desiring to preserve these values by calling attention to developments threatening their

viability."² Two of his themes, both frequently echoed by others, were these: By "the decision that we must 'fight fire with fire'" which "was the result of secret National Security Council directives ... unwittingly, the United States accepted the communist definition of 'intelligence' and began to ape the adversaries in doctrine and practice."³ And: "Secret intervention ... has made the U.S. government a symbol of hypocrisy particularly with large numbers of American youth. There is no greater danger to America's security than that coming from the deep alienation of a large segment of the present young generation. If they cannot believe their government then they will have no faith in it ... If, in fighting communism -- or fascism -- a nation yields to the strong temptation to imitate the means of its enemies, that nation invites ultimate destruction of what it seeks to defend."⁴

Richard A. Falk counseled respect for international law "as a necessary, if weak and uneven, system of behavior guidance": "It is neither possible nor desirable to separate foreign affairs from domestic society when it comes to the rule of law. The attitude of amorality and a-legality so often characteristic of CIA operations abroad seeps its way into the acts of policymakers in domestic settings ... Even the socialist governments have

affirmed their respect for international law ... Part of securing the rule of law in general involves extending its reach to foreign policy."⁵

Ransom also undertook to illustrate the other side of the argument, albeit in terms not calculated to make it sound attractive: "A secretary of state once referred to a 'desperate back-alley struggle going on in the world today.' Unfortunately, Dean Rusk implied, we cannot rise above this struggle. Rather, we must get down into the gutters of these 'back alleys' and fight it out."⁶ A British observer put it this way: "Secret Services ... are part of modern national and international life in a world that is no longer ruled by 'negotiations between gentlemen' but rather by plots, cabals, revolutions, conspiracies, assassinations, coups d'etat and general mayhem."⁷ General Graham used a formulation not unfamiliar to old intelligence hands: "U.S. intelligence agents cannot function effectively using the Guide Book for Girl Scouts as an operating manual ... In clandestine activity, 'fair play' could quickly result in the death of agents."⁸

Under prevailing conditions, Lefever found nothing to recommend what he called "this peculiar American penchant to export our virtue."⁹ But neither did he see merit in the idea that Western intelligence had sunk to

the level of its Communist counterparts: "While there are superficial similarities between KGB operations abroad and those of Western clandestine agencies, there are many significant differences, all rooted in one fundamental fact -- the KGB is the instrument of a totalitarian regime ideologically committed to the neutralization or destruction of selected non-communist governments and motivated by the conviction that the Communist system is destined to prevail in the world ... Unlike the CIA, the KGB is not subject to the rule of law, even Soviet law. Hence, it is constrained neither by law nor by fear of public disclosure. And unlike the CIA, the KGB has a massive domestic role ... Unlike Western intelligence agencies, the KGB is not constrained by the Judaeo-Christian ethic which insists that the means employed by the state, even in war, be limited by law and humane considerations ... Western governments often violate their own norms, but this does not invalidate either the norms or the fact that partial observance of the norms results in less cynical and brutal policies and behavior."¹⁰

What, then, did Lefever see as the ethical basis for Western intelligence tactics? "Foreign intelligence can be thought of as a form of warfare. Like war, intelligence is an extension of diplomacy ... What about the morality of secrecy, deception, and coercion? Clandestine

activities always embrace an element of deception and have certain moral pitfalls for those who engage in them. In principle, lying is wrong. But in adversary situations such as football and war, deception is accepted ... In all clandestine activities abroad, deception is essential to provide cover for U.S. officers, to protect cooperating agents, and to gain access to the persons and organizations for collecting intelligence or engaging in political operations."¹¹

Lefever cited what he perceived as principles in a "just war" which, by extension, could include clandestine activities: "The cause can be good and the means can be appropriate in principle, but the contemplated action ... cannot be justified unless there is a reasonable chance of success. If the operation is successful, the new situation should provide a better chance for peace, security, and justice than the previous condition. Moral choice demands calculation -- an assessment of multiple causes, multiple means, and multiple consequences. This moral-political calculus should be a continuous process before, during, and after any operation, covert or overt, domestic, or foreign. Ends, means, costs, and consequences should be constantly weighed ... There is no clear dividing line between war and peace, and all foreign policy programs of

a democratic state should meet the three criteria of the just war -- the objectives must be just, the means must be just and appropriate, and there should be a good chance of success. So measured, it is reasonable to conclude that by and large the CIA has met these criteria."¹²

Lastly, on the question of observance of international law, Phillips observed "that, undesirable as it may be, there are relatively few recognized, and no enforceable, international laws."¹³

However the issue was turned, thoughtful observers recognized the potential for disagreement. Barnds, whose views of CIA have generally been favorable, nevertheless acknowledged "that even supposedly secret intelligence organizations do not and cannot operate outside and apart from the American milieu or mood."¹⁴ And J. William Fulbright, in maintaining that "we must not fight fire with fire," also found: "There are times when it is necessary to violate principle for the sake of principle ... The danger, of course, is that expediency, like alcohol and tobacco, easily becomes a habit ... It tends to undermine the very purpose for which it was undertaken ... The problem could be easily resolved, at least in principle, if we could simply lay down a rule that the end never justifies the means, that our policy must always be open and honest and made in accordance with constitutional

procedure. The trouble is that that is probably not possible ..."¹⁵

Understandably, contributions to the discussion of moral/ethical practices in the intelligence field were often expressed in terms of certain types of activity, rather than in a general frame of reference. Unfortunately, struggles with intelligence terminology and with definitions of various concepts -- subjects that have caused problems even within the intelligence community -- did not always end in victory. Such terms as "covert," "clandestine," "espionage," "operation" and "action," used either separately or in a variety of combinations, have meanings and boundaries for professional intelligence officers that go well beyond dictionary definitions. In order to allow for some of the inevitable imprecision, we shall use no more than two broad subject categories in our discussion of ethical practices abroad: Clandestine Collection -- gathering information not openly available from sources not open to public view; and Special Activities (Covert Action) -- steps in support of U.S. policy, but with concealment of sponsorship. Special Activities, as the term is used here, have in practice covered many things, among them unattributed -- or mis-attributed -- propaganda; the issuance of spurious information; attempts to influence foreign leaders; non-public --

and sometimes mislabeled -- support of persons and groups attuned to American interests; steps designed to discredit those perceived as adversaries of the United States; and, in its most extreme form, attempts to assassinate foreign leaders. Paramilitary campaigns -- invasions of, or combat in, foreign territories, performed under unadmitted CIA sponsorship -- have also been called a form of Special Activities, even though their veneer of secrecy has been too thin to make them truly compatible with the rest.

b. Clandestine Collection:

While CIA's secret intelligence collection has drawn less criticism than its action programs, collection has by no means been immune from attack on ethical grounds. Primarily, under standards favoring openness over secrecy, it has been condemned as merely one of the clandestine undertakings that are altogether reprehensible by definition. Usually the condemnation has been accompanied by the contention that we can afford to do without information obtained through espionage. Barnett, on his way to the conclusion that "the dirty-tricks department must be recognized for what it is, a criminal enterprise," maintained that "U.S. covert action and clandestine intelligence collection (excepting satellites) could be abandoned unilaterally with a net gain in security

for the American people ... because most of the information so expensively and dangerously procured by secret agents is politically worthless. The work product of the spy is inherently suspect because specialists in espionage are in the business of producing disinformation as well as information. Indeed, the more esoteric and elaborate the deception required to produce a given bit of data, the less likely the spy's political superiors are to believe it."¹⁶ At another point, he asserted: "Generally speaking ... covertly collected information is useful only for the conduct of military or paramilitary operations"¹⁷ -- which, of course, he found objectionable. "In the field of classical espionage, the CIA's Clandestine Services have been singularly unsuccessful in their attempts to penetrate or spy on the major targets," Marchetti and Marks wrote, thereby in effect buttressing Barnett's argument. "The loudly heralded Berlin tunnel operation of the mid-1950s ... produced literally tons of trivia and gossip, but provided little ... that could be used by the agency's intelligence analysts."¹⁸ A British expert expressed this in more general terms: "Every scrap of intelligence that can be obtained overtly should be obtained overtly. Secret intelligence is expensive, difficult, unreliable and intermittent. It should be demanded only when all the overt means have

failed."¹⁹ Blum's approach had a more genuinely ethical connotation: "Covert intelligence should be sought only to the extent that nations deny us normal free intercourse with their citizens. We should ask no more access than we are willing to grant."²⁰ A most undiluted endorsement of moral criteria was expressed by author Alva Myrdal: "More and more the world might be rid of the shameful reliance on espionage, deceit and covert actions by so-called 'intelligence' agencies. With the advance of technical means of observation from a distance we ought to be able to cease to use human beings as spies. They are regarded as despicable people when they are found out. Their shady existence should not be tolerated any more as respectable. A new policy of open information should help to erase this blot from our civilization. The key to control of disarmament is the construction of universal confidence based upon the cumulative process of shared information."²¹

The case in favor of clandestine intelligence collection was most succinctly summarized by Cyrus Vance in a statement to the Church Committee: "The continuation of such collection should be permitted as I believe it is essential to the national security." Marchetti and Marks, despite their stated reservations about the utility of

CIA's collection, nevertheless conceded, however grudgingly, "occasional espionage coups."²² But like many others, they sought to make a distinction -- blurred somewhat by dubious terminology -- between "the gathering of intelligence" from all sources, "a necessary function of modern government ... vital to the conduct of foreign affairs," and "the illegal and unethical clandestine operations carried out under the guise of intelligence ..."²³

Professor Andreas Lowenfeld, saying he was not sure that information-gathering could be separated from operations, thought that espionage, by helping to clarify foreign intentions, "may well be ... a good thing, a stabilizing influence, a force for peace."²⁴ Phillips, whose one-time activities included clandestine intelligence collection, rejected the notion that intelligence, divorced from the "dirty tricks" of covert action, "can be collected 'innocently' and 'decently'" -- that the collection could be "a passive activity subjecting the United States to less involvement than covert action" or that with the use of open publications "the residue from clandestine sources such as spies could be sacrificed without harm." Analysts could not get information on "secret intentions and plans" from open literature, and none "had ever suggested to me that he could perform his duties without intelligence provided by spies."²⁵ Cline, a senior analyst at the time of the Berlin tunnel operation, also disagreed with

Marchetti and Marks: "The take was very useful for Soviet analysts ... in CIA and elsewhere in the intelligence community."²⁶

c. Special Activities:

(1) General Objections:

From the foregoing, it may be inferred -- if inference is needed -- that a much heavier fire of criticism has been directed at all forms of Special Activities (once known as "Covert Action" or "CA") than at the processes essentially designed to acquire information and knowledge for the government. Critics have held that Special Activities had been incompatible with our standards, hurt our nation's reputation, victimized the American public along with the intended targets, distorted our foreign policy, been impossible to confine to worthwhile purposes, encroached upon the rights of others, disregarded international law, been out of control, been unnecessary or counter-productive, and circumvented democratic institutions.

Often all types of Special Activities were lumped together, as in the following statement by Borosage and Marks: "Covert action violates some of the basic principles of our constitutional order, of international law, and of values generally shared

by American citizens. The only justification for these activities would be if our nation's security were dependent upon them. Yet, as many reports ... suggest, the CIA's activities abroad seem to have little to do with the defense of the United States or the security of the American people ...²⁷

Barnet wrote about "the false-bottom world that has ended up confusing the American people as much as it has confounded foreign governments ... we have pretended to ourselves that we can support murder, arson, larceny, and deceit abroad and still continue to enjoy democracy at home." He continued: "The secrecy that shrouds covert operations distorts the foreign policymaking process in a number of specific ways. First, covert operations are typically discussed by a small group with special clearances. (As a general rule those able to get the clearances already have a vested interest in the operation.) Second, covert operations encourage adventurism because they create the impression, often a false one, that they can be disavowed if they fail. Third, covert operations often close options rather than open them. (One of the reasons President Kennedy decided to go ahead with the Bay of Pigs operation was Allen Dulles' warning that the Cuban refugees

recruited for it would expose it if they did not get the chance to carry their flag to Havana.) Fourth, the lack of control over covert operations leads to minor diplomatic disasters ..."²⁸

Distortion of the foreign policymaking process has also been one of Halperin's themes. "Covert operations tend to distort the perceptions of foreign policy held not only by Congressmen but also by scholars and, in turn, the public," he and co-author Stone wrote in one essay. They made other points as well: "It is possible, with covert operations, to induce reactions from other nations which are self-fulfilling. Castro's anti-American attitude can be shaped by American sabotage of which he is cognizant but the American public is not ... The 'enemy' may understand only too well what is happening, and sophisticated observers in third countries may also. But the American public is the last to know." And: "Government credibility suffers not only from acts of omission but also from the necessity to lie, to cover up."²⁹ Elsewhere, Halperin raised the conflict-of-interest issue touched on by Barnett: "The proposals for covert operations come largely, if not entirely, from the organizations that will be responsible for then carrying them out ..."³⁰

Calling Special Activities CIA's "favorite field of operational endeavor" and one in which "the agency has enjoyed its greatest degree of success," Marchetti and Marks saw the liabilities in practical terms: "Its blunders and failures have caused much embarrassment to the United States ... Some of its 'victories' have since come back to haunt the U.S. government. One cannot help but wonder now if it might not have been wiser for the CIA not to have intervened ..."³¹

Falk, whose argument for acceptance of international law was cited earlier in a more general context, took special note of the issues raised by Special Activities. In presenting what he called "the international law case against CIA covert operations," he wrote: "International law rests on the fundamental proposition that the government of every sovereign state has complete jurisdiction over events taking place within its territory, and that, correspondingly, a foreign government has no legal right to act beyond such explicit grants of right as are made in the course of exchanging diplomatic representatives or agreeing to a foreign military presence." Regarding "the broader question as to whether a foreign government can legitimize intervention in its internal affairs by giving its consent," Falk cited "the argument ... that any secret authorization of foreign

military and paramilitary action violates the principle of national self-determination that inheres in a state (or society) rather than is its government." There are instances of "the CIA role in aiding, abetting and conspiring with foreign governments which are themselves violating rules of international law," as well as, inter alia, "a more familiar pattern of ... covert activities carried on without the consent of the constituted government in the foreign society or in direct opposition to its wishes." Falk also brought out arguments against the international law case: the United States should not be hobbled by restraints not binding on unscrupulous rivals, and the law was not consistent either in terms of standards or application. But in the end he strongly recommended compliance, necessitating abolishment of "all programs of clandestine operations, including possibly illegal intelligence-gathering abroad." Lest this turn out to inhibit support for so-called liberation movements, he made one other point: "It should be recognized that respect for international law in this area of behavior is not necessarily inconsistent with giving support to liberation movements, provided the goals and legitimacy of a specific movement receive the formal endorsement of the overwhelming membership in

the international community in a formal act of a main organ of the United Nations."³²

Special Activities have occasionally been criticized in terms of Presidential, rather than CIA's, disregard of democratic processes. "One of the major attractions of covert operations is the ability to avoid multiple audiences," Halperin explained. "The President himself can usually authorize such operations without having to go to Congress for funds or to go before the American people to make a public justification."³³ In factual terms, the Church Committee seemed to agree: "Successive Presidential administrations regarded covert action as a quick and convenient means of advancing their particular objectives."³⁴ Phillips, in attempting to distinguish between acceptable and unacceptable covert action, referred to "the inexcusable Track II" program in Chile, "when a U.S. President used his intelligence arm to conduct foreign policy without advising his Secretary of State."³⁵ A related question, with dimensions of accountability as well as ethics, has been whether Congress had authorized, or expected, Special Activities altogether, and how they had come into being. Ransom was "convinced ... that Congress did not intend to authorize anything but ... functions ... related to ... information," and thought that Special Activities then became

"an American reaction to Stalin and communism."³⁶

Wise also found it "not apparent ... that Congress expected that the CIA would engage in covert political operations." Granting that they "might have seemed logical and necessary in the era of the Cold War," he regarded them as no longer "justified today."³⁷

(2) General Defense:

The defense of Special Activities has ranged from vigorous to apologetic, and has addressed itself both to past national needs and future national option requirements. Defenders have argued that the U.S. must have means short of open hostilities to help friends and counter adversaries, that great powers must protect their interests, that the U.S. cannot survive without the weapons available to others, that in real life international law is not a factor, that clandestinity is needed for the protection of those working with us, that a large portion of our Special Activities have been small and ethically defensible, that clandestine attempts to influence foreign events are merely extensions of foreign policy programs designed for the same purpose, and that Special Activities are a desirable alternative to open confrontation and war.

One basic rationale for Special Activities was formulated in the following report related to the

1954 Herbert Hoover Commission Report on government organization: "It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever cost. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the U.S. is to survive, long-standing American concepts of 'fair play' must be reconsidered ... We must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated and more effective methods than those used against us. It may become necessary that the American people will be made acquainted with, understand and support this fundamentally repugnant philosophy."³⁸

As a rule, supporters of Special Activities have subscribed to this, but have been inclined to emphasize the positive, profess their respect for ethics, and question the invocation of ethics by opponents of Special Activities solely on the grounds of realism and relevance. "The continued use of covert political operations by the United States will undoubtedly pose troublesome questions of conscience," Charles J. Micoleau wrote. "Yet while overt diplomatic instruments are probably preferable, it is unrealistic to expect our government to abstain from the use of

covert intervention when no alternative exists simply on the basis that it is 'unethical.'" He regarded it as "difficult to see the relevance of 'morality' to the issue of whether to employ covert operations in the implementation of our foreign policy. The nature of the struggle in which we are engaged has meant that generally accepted standards of ethical and moral behavior are inapplicable ... In other words, the decision to rely upon covert intervention in a given situation should be judged solely in relation to its intended objective and to the consequences which would result if it were not employed."³⁹ Allen Dulles, in his own way, stressed what he saw as international imperatives: The Truman and Eisenhower doctrines had served us when American intercession abroad was openly called for, but "did not cover, and possibly no officially proclaimed policy could cover, all the intricacies of situations where a country faces imminent Communist take-over and yet sends out no cry for help ... What are we to do about these secret underground techniques ...? Wherever we can, we must help to shore up both the will to resist and confidence in the ability to resist." Also: "In applying the rule of force instead of law in international conduct, the Communists have left us little

choice except to take counteraction of some nature to meet their aggressive moves, whenever our vital interests are involved. Merely to appeal to their better nature and to invoke the rules of international law is of little use."⁴⁰ De Sola Pool saw Special Activities as "the convenient instrument for establishing broadcasting stations by which refugees from communist oppression could keep valid news and hope flowing back to their homelands. It became the convenient instrument whereby the U.S. government could give aid to free labor movements, student movements, and organizations of intellectuals who were engaged in the struggle to maintain freedom in their countries in conflict with similar organizations operated as communist fronts under Moscow's control ... Every major power has some means whereby it supports social and cultural activities congenial to its goals."⁴¹ "The essence of CIA political activity," explained Lefever, "is to identify and strengthen indigenous organizations, not to manipulate or control them ... In a case where the regime is in danger of being subverted by Moscow ... or is developing a belligerent foreign policy ... internal opposition groups naturally arise ... The NSC may authorize CIA to assist ... CIA responds to opportunities. But if prior contacts had not been built up over time, there would be a few opportunities to respond to ...

On the purely pragmatic level, the United States would be at a disadvantage if it denied itself an instrument fully available to its allies and adversaries ... most Americans would agree that the United States should not unilaterally abstain from covert operations."⁴⁹ Charles J. V. Murphy quoted former CIA director John McCone: "Covert action is a rational alternative to an overt response ... that can turn costly, unavailing and humiliating. Covert action is a useful, even indispensable means of self-defense. As the agency has employed this method in many situations, it was the only way of making the voice of reason heard in foreign places."⁴³ De Sola Pool made his point graphically: He did not find "Green Berets a substitute for ... civilian agents."⁴⁴

Phillips took issue with the proposition that aid to our friends abroad should be given openly, if at all: "Although refreshingly straightforward, this approach overlooks one reality. The beneficiaries of such aid would be the first to insist that it be given discreetly. It would be political suicide for them to accept foreign assistance, just as it would be for a party in this country to do so. (On the other hand, I found in serving in eight countries

abroad that handsome subsidies given by the Soviets to Communist opposition parties surreptitiously are accepted as a fact of life by nearly everyone, including most governments and peoples of the countries concerned.)" Phillips then proceeded to a more general theme: "Clandestine operations have been condemned as immoral in principle and illegal in practice. This attitude naively sidesteps the problems of existing and, indeed, surviving in a world whose history continues to be determined by nations promoting their own interests at the expense of others -- the League of Nations, United Nations, and similar laudable endeavors notwithstanding. More to the point, it would have the United States, blindfolded and with one hand tied behind its back, compete in the international arena under rules of engagement which, at best, are minimal and flexible. This grim state of affairs is not likely to improve much in our time nor, for that matter, in our children's or grandchildren's. Until it does, the nations of the world will continue to insist on their sovereign right to defend and advance their interests through clandestine operations, restricting any question of immorality or illegality to cases uncovered within their own national boundaries."⁴⁵ He refused

to set Special Activities apart from foreign policy:
"If we decide that covert action is wrong because it constitutes meddling in other people's affairs, we should re-examine not only our intelligence activities but our entire foreign policy, our foreign aid program, and our tariff policies (to mention only a few examples) because any aspect of each of these can have a profound effect on the internal affairs of any number of countries and very often is designed to have just such an effect."⁴⁶
Cline, using Italy as an example, conveyed the same impression: "These covert action programs ... were viewed simply as part of diplomatic and military policy."⁴⁷
Cline also played down the ethical implications of most Special Activity programs: "One of the hardest things for outsiders to believe about CIA covert action programs is that only a few are big ... Most covert action projects are small scale -- getting pro-U.S. books printed or anti-USSR articles published in newspapers, or providing funds and briefings to youth and labor representatives attending international meetings likely to be exploited by professional Communist 'agitprop' officials. These projects have few risks attached and often involve only small sums of money. Most would be hard to construe as illegal, let alone immoral."⁴⁸
Also, de Sola Pool observed, "American covert

intelligence does practically nothing in democratic countries,"⁴⁹ presumably meaning stable Western societies.

While CIA officials have acknowledged that Special Activity projects intended to mislead foreign audiences entail the risk of misleading Americans, this was seen, in the words of a former Deputy Director, as "fallout" which was "inevitable and consequently permissible." Another former Deputy Director told the Church Committee: "There is no way ... of insulating information that one puts out overseas and confining it to the area where one puts it out ...". He nevertheless thought that "we would be fools to relinquish" this type of activity "because it serves a very useful purpose."⁵⁰

On the question whether CIA's Special Activity programs had flouted American policies and institutions, the Church Committee noted: "The Agency's large-scale clandestine activities have mirrored American foreign policy priorities."⁵¹ On the question of direction: "CIA, at the direction of the National Security Council, expanded its ... approach into a world-wide effort to anticipate and meet communist aggression, often with techniques equal to those of the Soviet clandestine services."⁵² And on

congressional authority: "Since the CIA's wartime predecessor, the Office of Strategic Services, had conducted covert operations, Congress may have anticipated that these operations were envisioned."⁵³ Colby took issue with the idea that Special Activities had been a Cold War phenomenon and should now be dispensed with: "There have also been, and are still, certain situations in the world in which some discreet support can assist America's friends against her adversaries in their contest for control of a foreign nation's political direction. While these instances are few today compared to the 1950s, I believe it only prudent for our nation to be able to act in such situations, and thereby forestall greater difficulties for us in the future."⁵⁴ And Vance stated to the Church Committee: "With respect to covert actions, I would not recommend that all covert actions be prohibited by law. I believe it is too difficult to see that clearly into the future."⁵⁵

(3) Paramilitary Operations, Assassinations:

In contrast to the debate about Special Activities in general, which has been joined by many advocates on both sides, that about paramilitary operations and assassination attempts has been rather one-sided in recent years: Paramilitary undertakings

have been left with few friends, and assassinations with virtually none. "Paramilitary endeavors," Phillips reflected, "believe sooner or later the one condition essential to covert action, secrecy, and flout the old maxim that one should not attempt to cover a hippopotamus with a handkerchief ... Unless the U.S. government was prepared to sponsor overt intervention in Cuba, the Bay of Pigs should have remained essentially a psychological warfare project rather than a military incursion."⁵⁶ Cline felt the same way, and cited a moral consideration of a sort common among intelligence officers: "A fundamental weakness in paramilitary covert action ... is that a single misfortune that reveals CIA's connection makes it necessary for the United States either to abandon the cause completely or convert to a policy of military intervention. Because such paramilitary operations are generally kept secret for political reasons, when CIA's cover is blown the usual U.S. response is to withdraw, leaving behind the friendly elements who had entrusted their lives to the U.S. enterprise."⁵⁷ Lefever, on the other hand, pointed to the "secret" war in Laos as a "large paramilitary operation" which "compared to other military efforts in Southeast Asia ... was remarkably successful."

In the Bay of Pigs operation, "the objective was worthy, but the means were inadequate ... If the moral disciplines had been observed, either there would have been no Bay of Pigs landing or the operation would have been modified to 'succeed.'"⁵⁸

Regarding projects designed to lead to the assassination of foreign leaders, some writers have sought to explain but not to defend them. "For example," Phillips wrote, "I could understand in the case of Castro why a very few men might weigh the merits of disposing of one man at the same time two American Presidents had approved the Bay of Pigs where many died and which could have resulted ... in the death of thousands. But ... how those few men in CIA could have been so stupid as to make a connection with the Mafia for that purpose I cannot explain. A tenet ... is to avoid association with those who might later resort to blackmail." He wound up declaring "that assassination is unacceptable either as a practice or concept in our society."⁵³ Cline, on the other hand, judged that, "once the assumption was made that it was essential to get rid of Castro by assassination, it was not illogical to try to do it through the Mafia." He was sure the man in charge of the project "believed that it was

patriotic, even moral, to kill a foreign ruler when ordered to do so by his superiors for reasons of U.S. security. Many of the romantic so-called 'cowboy' types of covert action officers would have accepted this proposition, and in 1960-1961 many officials outside CIA would have subscribed to it as well. In any event, the responsible officers in CIA were convinced at the time that the White House had orally urged the creation of an assassination planning capability as a contingency precaution. The written record does not clearly demonstrate this to be either true or untrue." His conclusion was that "an inherently repugnant act like assassination should never be attempted unless duly constituted political authority is explicitly committed to some specific justification of the purpose that might override normal moral opposition to the means."⁶⁰

Regarding the question of political authority, the Church Committee made the following judgment: "No doubt, the CIA's general efforts against the regimes discussed in this report were authorized at the highest levels of the government. However, the record is unclear and serious doubt remains concerning whether assassination was authorized by the Presidents. Even if the plots were not expressly

authorized, it does not follow that the Agency personnel believed they were acting improperly."⁶¹ But the Committee had no doubt how the issue should be viewed: "We condemn assassination and reject it as an instrument of American policy."⁶² The Committee's stand had the support of, among others, former CIA directors William Colby, Richard Helms, and John McCone.

(4) Proposals and Compromises:

As with most other intelligence activities, a number of those tackling the subject of Special Activities presented their views with some qualification. Opponents agreed that such activities might be needed under certain conditions, and proponents conceded that some of them were dispensable. "Covert operations of a major kind should be regarded essentially as acts of war ... and thus should be used only 'short of war,'" Ransom wrote.⁶³ Morris and Mauzy recommended "that all covert actions be subject to a declaration of vital national interest by the President and prior consultation with representatives of both Houses of Congress." They also called for "a total bar on funding for interference in elections, mercenary military acts, or assassination."⁶⁴ As Hilsman saw it, "covert action was overused as an instrument of foreign policy, and the reputation of the United States

suffered more and more." He granted "countries who are the targets of ... hostility ... a right and a duty to defend themselves where those methods are effective and appropriate and for which methods there is no effective and appropriate alternative."⁶⁵ Cyrus Vance told the Church Committee: "I believe it would be wise to enact legislation prohibiting involvement in assassinations, as has been suggested by this committee. In addition, I would be in favor of legislation prohibiting interference with the electoral processes in other countries. I would note that the drafting of such legislation is a complex business, and it would have to be so drafted as not to block covert intelligence collection. Now, with respect to other covert actions, I believe it should be the policy of the United States to engage in covert actions only when they are absolutely essential to the national security."⁶⁶ And the Church Committee itself arrived, inter alia, at the following judgments: "... covert action must be seen as an exceptional act, to be undertaken only when the national security requires it and when overt means will not suffice ... covert action must in no case be a vehicle for clandestinely undertaking actions incompatible with American principles ..." In addition to assassinations, "the

standards ... should also exclude covert operations in an attempt to subvert democratic governments or provide support for police or other internal security forces which engage in the systematic violation of human rights."⁶⁷

These -- and many other -- conclusions represented a broadly based consensus that the nation should not deprive itself of the option of Special Activities, but that a line should be drawn between what would and what would not be permissible, and that new conditions as well as new procedures should be spelled out for launching Special Activity projects.

d. Ethics and Foreign Activities - CIA's Position:

The first thing to be said on CIA's behalf is that delimitation of its foreign activities, some of it on ethical grounds, is not only tolerable but desirable. This applies to the type as well as the scope of operations. There is, in particular, no need under any remotely foreseeable peacetime conditions for CIA to have authority to plan -- or carry out plans for -- anybody's assassination in a non-military context. (We do not think we ought not to address, nor try to anticipate, the ethics of a future war.)

We also believe that early successes in the political action and paramilitary fields contributed in the past to an unfortunate degree of reliance by our policy-makers on this type of solution to foreign problems through a civilian intelligence organization. In the future, we hope, such steps will be considered at best an unfortunate necessity, and never an early choice. We further recognize that during the height of the Cold War there was a proliferation of Special Activity programs which, in retrospect, is vulnerable to criticism. Whatever the law allows and our policymakers authorize in the future, we expect to use our authority with circumspection -- an approach which, we feel, will be more effective as well as more economical. Major Special Activities programs should also meet a test of

significant national interest.

In addition, it needs to be said that the rule limiting clandestine intelligence collection to cases and aspects where overt collection won't fill the bill, while difficult to apply, is fundamentally a reasonable one, and that we are becoming ever more attentive to it.

While we cannot speak for the Executive Branch as a whole, we, as an intelligence agency working within our form of government, can see much to be gained from the sharing of responsibility implicit in active Congressional oversight, provided that the Congressional machinery maintains the needed protection of our security as well as public confidence in its own function and performance. But while a broadened base of delimitation and authorization of CIA programs should increase confidence and reduce error, we would question the wisdom of ruling out in advance entire categories of activity (with the exception of non-military assassinations) on ethical grounds and thus tying the hands not only of future Presidents but of future Congresses as well.

We are, after all, living in a precariously balanced world with potential adversaries who can, if they will, use the full range of the tools of power -- including Special Activities -- without being inhibited by domestic ethics, and who have the means to manipulate

various foreign assets -- from surrogate armies to political parties, front organizations and receptive key individuals -- in promoting their interests abroad and in attempting to shift the balance beyond the limits required for our survival. At some juncture, and given certain specific circumstances, any one of a number of clandestine measures may become necessary, if only to avoid a military confrontation under worse conditions later. For Congress -- in the form that Congress itself decides in the interest of proper representation and security -- to participate in applying a test of national interest in reviewing any given situation is one thing; for it to foreclose national options is another. Categorical ground rules may seem safer in assuring ethical standards for the present generation and posterity; but there is also a serious risk in sacrificing too much of the nation's flexibility in future contingencies. In the end, we believe, the system will still depend on relationships and mutual confidence -- between those who conduct intelligence operations and those elected to public office at both ends of Pennsylvania Avenue, and between them and the public.

As to the judgment of what is and what is not ethical, we would expect continuing differences between

what is proper domestically and what is permissible abroad. In running its foreign operations, CIA has to abide by American laws. Contrary to what some writers have suggested, it cannot -- short of self-mutilation and undercutting its raison d'etre -- abide by the laws of the countries where it operates, or by what there is of international law that is not accepted as binding by the United States. Clandestine collection, for instance, is justified only in the interest of obtaining significant information not openly -- or legally -- available in the target countries; other forms of actions taken in our national interest must often remain covert precisely because they are at variance with local or international law, although not proscribed by American law. They must be based on our government's perception of national interest, ethical and legal permissibility and ultimate public benefit.

We cannot predict what specific methods CIA may be called upon to use abroad; and any discussion of this could hardly go beyond generalities. There will be some things that CIA's clandestine operators logically will not do, such as expend precious resources in subverting friendly countries, collect open information in open societies, or contravene the policies of their own government.

But CIA cannot do all of its work in the open. We might recall from our survey of public opinion that reactions in 1947, when CIA had barely been placed on the Congressional drawing board, revealed a widespread perception of intelligence work as a game that was dirty but necessary. Whatever people meant, they did not appear to anticipate that CIA would be able to do its job without in some way departing from the open codes of an open Western society. We cannot anticipate it today, either.

3. ETHICS AND DOMESTIC ACTIVITIES:

a. Range of Activities:

Early in 1975, when he was still Director of Central Intelligence, William Colby explained to a House subcommittee what his organization was engaged in doing within the United States, and for what reasons and purposes. The following excerpts, stripped of justification and organizational specifics not germane to our introduction of the subject, can serve as an overview of CIA's domestic functions:

Most employees were "in the Washington Metropolitan Area, performing analysis, staff direction, administrative support and Headquarters activities." Others "outside the Headquarters area ... perform support functions ... such as personnel recruitment and screening or contracting for technical intelligence devices. They also collect foreign intelligence here ... from private American citizens and from foreigners in the United States." A parallel "mission is to develop relationships with foreigners in the United States who might be of assistance in the collection of intelligence abroad" and who might "in this process" also furnish "foreign intelligence ... in the United States." "Security ... offices in the United States" were "conducting security investigations of individuals with whom CIA anticipates some relationship -- employment, contractual,

informational, or operational ... Another responsibility ... is the investigation of unauthorized disclosures of classified intelligence," a function stemming "from my responsibility ... to protect intelligence sources and methods ..." Thus the appropriate office "would prepare a damage assessment and endeavor to determine the source of a leak so that we could take corrective action." Further, "CIA conducts a broad program of research and development, largely through contracts with U.S. industrial firms and research institutes. In many such contracts, CIA sponsorship of the project must be hidden from many of the individuals working on the program itself ... Operations of this sort require complicated cover and funding arrangements." CIA therefore maintained "a variety of arrangements within the private sector to provide cover and support in the field of funding, insurance, security, and auditing," and also "to provide essential cover for CIA's foreign intelligence work." There was "a Recruitment Division to hire Americans with the required skills and expertise for Agency employment," in addition to which "we have confidential arrangements with some Americans who agree to assist us in ... our foreign intelligence work." There were "a number of training installations ... These cover everything from language and communications training

to clandestine operations and intelligence analysis." Occasionally, this meant "sending a student on a mock exercise into a large U.S. city environment to expose him to some of the problems of operating in a clandestine manner," with "the subject of the action" being "another Agency employee participating in the exercise." Lastly, the Agency had "cooperated and collaborated with ... governmental elements in the United States," beginning with "the other elements of the Intelligence Community ... joint activities ... in which it is proper for one Government agency to assist another ..." An example had been the program "in which CIA focused on the question of whether foreign manipulation or support was going to American dissident elements from abroad." In view of joint interests, "research and development of some of the complex technical equipment required for intelligence is in many cases conducted jointly by the Department of Defense and CIA ... Similarly, there is an exchange of trainees with various Government agencies ..." At one time, there had been "friendly liaison relationships with a number of police forces for assistance in CIA's mission of investigating its applicants, contractors, and similar contacts"; but in the spirit of partially prohibitive legislation, "CIA has terminated any assistance ..." ¹

Colby's remarks were made in the context of a response to "serious allegations ... by the press and other critics," and were primarily an attempt to provide background, perspective, illustration and refutation, rather than merely to catalogue functions and activities. Yet even the functional skeleton emerging from these excerpts should suffice to show the potential for a variety of conflicts between the institutions of an open society and a secret service. There is, first, the question of activities required to support and protect the intelligence establishment, and the relationship of those methods with ethics and law. Second, there is the question of the intelligence establishment's relationship with Americans -- individuals as well as groups -- who are not a part of it, but may in some way be affected by its existence and activities. In both cases, in the terms used by the Rockefeller Commission, the issue concerns "the rights of private citizens" on one side and "CIA's ability to function" on the other.²

b. Activities and Methods:

(1) Investigative Techniques:

The "serious allegations" referred to by Colby were those initiated by the front-page New York Times story of 22 December 1974, mentioned earlier, charging that CIA, "directly violating its charter, conducted

a massive illegal domestic intelligence operation ... against the antiwar movement and other dissident groups in the United States ..." The Rockefeller Commission, whose charter -- unlike the Church Committee's -- focused exclusively on CIA's domestic role, summarized the charges as follows:

"The initial public charges were that the CIA's domestic activities had involved:

"1. Large-scale spying on American citizens in the United States by the CIA, whose responsibility is foreign intelligence.

"2. Keeping dossiers on large numbers of American citizens.

"3. Aiming these activities at Americans who have expressed their disagreement with various government policies.

"These initial charges were subsequently supplemented by others including allegations that the CIA:

-- Had intercepted and opened personal mail in the United States for 20 years;

-- Had infiltrated domestic dissident groups and otherwise intervened in domestic politics;

-- Had engaged in illegal wiretaps and break-ins; and,

-- Had improperly assisted other government agencies.

"In addition, assertions have been made ostensibly linking the CIA to the assassination of President John F. Kennedy."³

Aside from the last charge, dismissed by the Commission and requiring no comment from us, the allegations pointed to tools and methods associated primarily -- although not exclusively -- with some form of search or investigation in the twin realms of security and counterintelligence to which Colby alluded in his 1975 testimony. Noting "the highly intrusive nature of these techniques," the Church Committee, in reference to the entire Intelligence Community, described them as follows: "The intelligence community has employed surreptitious collection techniques -- mail opening, surreptitious entries, informants, and traditional and highly sophisticated forms of electronic surveillance -- to achieve its overly broad intelligence targeting and collection objectives. Although there are circumstances where these techniques, if properly controlled, are legal and appropriate, the Committee finds that their very nature makes them a threat to the personal privacy and Constitutionally protected

activities of both the targets and of persons who communicate with or associate with the targets. The dangers inherent in the use of these techniques have been compounded by the lack of adequate standards limiting their use and by the absence of review by neutral authorities outside the intelligence agencies. As a consequence, these techniques have collected enormous amounts of personal and political information serving no legitimate governmental interest."⁴

The Church Committee explained in a number of ways where it saw those "dangers inherent in the use of those techniques": "Excesses in the name of protecting security are not a recent development ...". There had been the Alien and Sedition Acts in 1798, Lincoln's habeas corpus suspension during the Civil War, prosecutions for anti-war statements in World War I, the seizure of aliens in the 1920 Palmer Raids, and the detention of Japanese Americans in World War II. "Those actions, however, were fundamentally different ... The victims knew what was being done to them and could challenge the Government in the courts and other forums. Intelligence activity ... is concealed from its victims ... The victim ... accordingly may have no opportunity to challenge the

actions taken against him."⁵ It was a viewpoint shared by Professor North: "In democratic societies there are legal safeguards against many abuses of power, but in terms of the intelligence gathered about him by both public and private agencies the individual citizen is often at a severe disadvantage. If he is sued or formally charged with a crime he can apprise himself of the case brought against him and, through legal counsel, defend himself and challenge the accusations and evidence of his opponent. With respect to various types of intelligence gathered about him by private and governmental agencies, on the other hand, he may have very little recourse -- or even any awareness that he has been under investigation. In such circumstances, he may be subject to arbitrary political, economic, or social power with very limited possibilities for confrontation, challenge, or redress."⁶

While the thrust of statements like these would seem to have been aimed more at law enforcement organs than at a service with foreign intelligence orientation, CIA's participation in investigating possible foreign manipulation of and support for American dissident elements was a major factor in

bringing the Agency into the line of fire. It raised an additional fear: that the line between foreign intelligence collection and domestic law enforcement was being breached; that "personnel, resources, and methods" adapted to covert operations abroad "are employed in the American political process";⁷ and that, to use a term that has crept into the Congressional Record, CIA was "becoming a Gestapo."⁸ In particular the so-called "Huston Plan" of 1970 for coordination and expansion of domestic intelligence activity, eventually disapproved by President Nixon but, according to the Church Committee, nevertheless partially implemented,⁹ was seen by critics as constituting "a double illegality -- the simple violation of the constitutional rights of a citizen to his privacy and the intrusion of the CIA into domestic operations."¹⁰

The Church Committee traced the history of CIA's involvement: "In the late 1960s, the CIA increasingly was drawn into collecting intelligence about domestic political groups, particularly the anti-war movement, in response to FBI requests and to pressure from Presidents Johnson and Nixon. A principal assistant to President Johnson testified

that high governmental officials could not believe that 'a cause that is so clearly right for the country, as they perceive it, would be so widely attacked if there were not some [foreign] force behind it.' The same pressures and beliefs led to CIA investigations of 'militant black nationalists' and radical students."¹¹ And elsewhere, in more specific terms: "In the late 1960's, CIA and NSA, acting in response to presidential pressure, turned their technological capacity and great resources toward spying on certain Americans. The initial impetus was to determine whether the anti-war movement -- and to a lesser extent the black power movement -- were controlled by foreigners. Despite evidence that there was no significant foreign influence, the intelligence gathering which culminated in CIA's 'Operation CHAOS' followed the general pattern of broadening in scope and intensity. The procedure for one aspect of these programs was established by an informal agreement between the CIA and FBI in 1966, which permitted CIA to engage in 'internal security' activities in the United States."¹²

The Church Committee saw the scope of these activities as a major problem: "Investigations of

groups deemed potentially dangerous -- and even of groups suspected of associating with potentially dangerous organizations -- have continued for decades, despite the fact that those groups did not engage in unlawful activity."¹³ The Rockefeller Commission, after noting that "it was probably necessary for the CIA to accumulate an information base on domestic dissident activities in order to assess fairly whether the activities had foreign connections," nonetheless concluded that "the accumulation of domestic data ... exceeded what was reasonably required to make such an assessment and was thus improper." Further, "the use of agents ... on three occasions to gather information within the United States on strictly domestic matters was beyond the CIA's authority."¹⁴ Regarding "the establishment of files and retention of information on thousands of Americans," a Church Committee staff report judged it to be, "although perhaps not itself the performance of an internal security function ... a step toward the danger of a domestic secret police against which the prohibition of the charter sought to guard."¹⁵ The Church Committee spelled out one reason for objecting to unnecessary collection:

"Intelligence collection programs naturally generate ever-increasing demands for new data. And once intelligence has been collected, there are strong pressures to use it against the target."¹⁶

David Phillips, attempting to distinguish between permissible and "indefensible" activities, also questioned "the practice of infiltrating CIA agents into domestic dissident groups so they could obtain radical credentials and cover for use overseas and try to find out, for Presidents Johnson and Nixon, whether there was a foreign connection with the unrest in American cities and on American college campuses"; indeed, he was against any "CIA operations in the United States which were unconstitutional and violated the rights of Americans."¹⁷

One multi-purpose tool Phillips included among those that "should not be tolerated in our country" was "opening mail to and from Communist countries."¹⁸ Ray Cline, his former colleague, agreed with him: "CIA plainly committed an error in conducting this mail-intercept operation. Much mail was opened; this is the only protracted operation that has come to light that is categorically illegal."¹⁹ In the Church Committee's words, the "programs for

the interception of international communications to and from American citizens, primarily first class mail and cable traffic," were "illegally instituted."²⁰ The Rockefeller Commission was similarly unequivocal: "While in operation, the CIA's domestic mail opening programs were unlawful ... The nature and degree of assistance given by the CIA to the FBI in the New York mail project indicate that the CIA's primary purpose eventually became participation with the FBI in internal security functions."²¹

The various other methods termed "surreptitious collection techniques" by the Church Committee were examined by both the Committee and the Rockefeller Commission. Primarily under the rubric of its investigative responsibilities (recruiting -- and checking on -- personnel, ensuring the safety and functioning of CIA buildings, employees and activities and protecting sources and methods), CIA was found by the Rockefeller Commission to have practiced physical surveillance, electronic eavesdropping, and surreptitious entries in the United States. While such measures had been limited in scope and up to a point were thought to have been justified, there had been instances in each category which had

exceeded the bounds of law and legitimacy for an organization that basically had no domestic missions.

Among activities which the Rockefeller Commission regarded as objectionable under given sets of conditions were the following: (In observing dissident rallies:) "In some instances, the Agency identified leaders or speakers at a meeting by photographing their automobiles and checking registration records. In other cases, it followed them home in order to identify them through the city directory. Photographs were also taken at several major demonstrations in the Washington area and at protest activities in the vicinity of the White House."²² (In tracing leaks:) "The Commission found two cases in which telephones of three newsmen were tapped in an effort to identify their sources of sensitive intelligence information. The first such instance took place in 1959. The other took place in 1962, apparently with the knowledge and consent of Attorney General Kennedy. Three additional investigations were found in which reporters were followed in an effort to identify their sources ... in 1967, 1971, and 1972."²³ (In investigating individuals, primarily those affiliated with CIA:) The Commission discovered evidence of "thirty-two wiretaps, thirty-two instances of bugging,

and twelve unauthorized entries. The last wiretap used by the CIA was in 1965; the last bug in 1968; and the last unauthorized entry was in 1971. None of these activities was conducted pursuant to a search warrant, and only in connection with the 1965 wiretap did the Agency obtain the prior written approval of the Attorney General. In at least fourteen instances ... the CIA obtained access to information on individual Federal income tax returns ... apparently seeking information which would indicate possible connections between the subject and foreign groups."²⁴ (In responding to requests subsequently related to Watergate-connected activities:) "In providing the disguise and alias materials, tape recorder and camera to (Howard) Hunt, as well as in providing the (Daniel) Ellsberg profile, the Agency acted in excess of its foreign intelligence functions and failed to comply with its own internal control procedures."²⁵

The Rockefeller Commission, of course, saw beyond one side of this particular coin. It had been convinced by "detailed analysis of the facts ... that the great majority of the CIA's domestic activities comply with its statutory authority," and "the Agency's own recent actions ... have gone far to

terminate the activities upon which this investigation is based."²⁶ Beyond that, it inevitably found that practices judged improper in some cases could under different circumstances, or in moderation, be acceptable and even necessary. Examples: (In observing dissident organizations:) "With certain exceptions, the program under which the Office of Security (without infiltration) gathered, organized and analyzed information about dissident groups for purposes of security was within the CIA's authority. The accumulation of reference files on dissident organizations and their leaders was appropriate both to evaluate the risks posed to the Agency and to develop an understanding of dissident groups and their differences for security clearance purposes."²⁷ (Regarding investigations of individuals:) "Physical surveillance, while not itself unlawful, may become so if it reaches the point of harassment" and "should be undertaken only after high level authorization within the Agency."²⁸ Also: "Investigations of allegations against Agency employees and operatives are a reasonable exercise of the Director's statutory duty to protect intelligence sources and methods from unauthorized disclosure, provided they are lawfully conducted. Such investigations also assist the Director in the exercise of his unreviewable

authority to terminate the employment of any Agency employee. Although such investigations may take on aspects of domestic counterintelligence or enforcement of domestic laws, they are proper unless their principal purpose becomes law-enforcement or the maintenance of internal security."²⁹ (In furnishing material to Watergate figures:) "The Agency provided these materials in response to demands from highly-placed members of the White House staff and, except in the case of the Ellsberg profile, without knowledge that they were intended for improper purposes. Those demands reflect a pattern of actual and attempted misuse to which the CIA was subjected by the Nixon administration."³⁰

CIA had other defenders. Some sharply disagreed with the characterization of CIA's "domestic intelligence operation" as "massive." Lefever termed the "outcry ... a tempest in a teapot."³¹ Colby maintained in official testimony that "a counter-intelligence operation directed at possible foreign links to American dissidents ... in response to Presidential concern ... was neither massive, illegal, nor domestic." Regarding such activities as "break-ins, wire tapping, and surreptitious inspection of mail ... most ... were taken under the general charge ... of the Director ... to protect intelligence sources and

methods ... Whether or not they were appropriate, there are very few institutions in or out of Government which in a 27-year history do not on occasion make a misstep, but in CIA's case such steps were few and far between and quite exceptional to the main thrust of its efforts."³² "Illegal CIA activity," wrote Cline, "was entirely in domestic fields, often where the White House had pushed CIA into dubious enterprises, and they were not massive ... Some of them definitely reflected poor judgment by CIA or White House officials. Defending itself against the charges of massive wrongdoing, CIA provided its critics with other details to declaim against. This set-up was virtually a no-win situation. No institution is totally without error ..."³³

On the subject of operations aimed at domestic dissident organizations, Cline admitted that "secret penetrations ... did take place in circumstances where it was impossible to avoid ambiguity as to the basic aims of the operations."³⁴ However, the "recording of ... names was not a massive effort in terms of total CIA name reference files. The existence of a file did not indicate active CIA surveillance of any kind except in cases where a person was suspected of being in contact with foreign intelligence agents

abroad. It was not illegal for CIA to record foreign intelligence reports or to file and reference official queries about Americans suspected of working for foreign intelligence agencies."³⁵ Of course, "solid evidence about American citizens working for foreign intelligence groups would have provided basis for criminal charges under the Espionage Act."³⁶ Graham had a related thought: "For instance, if U.S. intelligence discovers a channel of communications, by mail or radio or other means, between a terrorist organization abroad and an American citizen, it would make no sense to prohibit interception of those communications by U.S. intelligence on the grounds of protecting the American's civil rights. In fact, it could be considered unconscionable negligence not to intercept such communications."³⁷ Whatever the "propriety and legality of the specific acts," Cline contended, "no stretch of the imagination turns them into the massive police-state activity initially conjured up. CIA has never come close to being an American Gestapo. Yet the moral tone of much of the public criticism suggests this was a real danger."³⁸

Two other questions deserve mention in this space. One is that of distinguishing between violations of basic rights and violations of statutory

authority. One passage in a Church Committee staff report put it this way: "For the American citizen, the fact that his Government keeps a file on his associations, or monitors his travel and his advocacy of dissent, is far more important than the question of which office in the bureaucracy is doing it." Ultimately, there was "the question of what kinds of intelligence operations are proper undertakings for any part of the Government."³⁹ In this connection, it might be noted that Helms, in a deposition to the Rockefeller Commission, termed the charge to protect sources and methods an "albatross" around the Director's neck and recommended that it be "given to the FBI, at least with regard to investigation of any Americans who were not affiliated with the CIA."⁴⁰

The second question concerns the background of foreign intelligence activity and its possible bearing on a need for American counter-efforts. Many observers have alluded to this. The Rockefeller Commission took it into account: "... we cannot ignore the invasion of the privacy and security rights of Americans by foreign countries or their agents. This is the other side of the coin and it merits attention here in the interest of perspective ... The communists invest large sums of money, personnel and technology

in collecting information -- within the United States -- on our military capabilities, our weapons systems, our defense structure and our social divisions. The communists seek to penetrate our intelligence services, to compromise our law enforcement agencies and to recruit as their agents United States citizens holding sensitive government and industry jobs. In addition, it is a common practice in communist bloc countries to inspect and open mail coming from or going to the United States. In an open society such as ours, the intelligence opportunities for our adversaries are immeasurably greater than they are for us in their closed societies. Our society must remain an open one, with our traditional freedoms unimpaired. But when the intelligence activities of other countries are flourishing in the free environment we afford them, it is all the more essential that the foreign intelligence activities of the CIA and our other intelligence agencies ... be given the support necessary to protect our national security and to shield the privacy and rights of American citizens from foreign intrusion."⁴¹ And intelligence veteran Miles Copeland had no doubt: "The enemy is hidden, so the offensives against him are largely a matter of seeking him out and learning in advance of his plans to attack us. Unavoidably, this involves invading the privacy (by wiretaps, 'bugs,'

and other surveillance devices) of a wide range of suspects, most of whom turn out to be innocent. They also involve 'dirty tricks,' for eliminating our kind of enemies, which can be effectively accomplished only in secret ... We cannot forego invasions of privacy and 'dirty tricks,' without giving the enemy advantages that would constitute a grave risk to our national interests ..."⁴²

(2) Behavioral Research:

Documentation discovered and released by CIA in 1977 provided details of behavioral experimentation, as well as some other research, conducted from 1953 to 1964. The history and context of those experiments had been described two years earlier by the Rockefeller Commission as follows: "In the late 1940's, the CIA began to study the properties of certain behavior-influencing drugs (such as LSD) and how such drugs might be put to intelligence use. This interest was prompted by reports that the Soviet Union was experimenting with such drugs and by speculation that the confessions introduced during trials in the Soviet Union and other Soviet Bloc countries during the late 1940's might have been elicited by the use of drugs or hypnosis. Great concern over Soviet and North Korean techniques in brainwashing

continued to be manifested into the early 1950's. The drug program was part of a much larger CIA program to study possible means for controlling human behavior. Other studies explored the effects of radiation, electric-shock, psychology, psychiatry, sociology and harassment substances. The primary purpose of the drug program was to counter the use of behavior-influencing drugs clandestinely administered by an enemy, although several operational uses outside the United States were also considered ... Following laboratory testing of LSD and other potential behavior influencing substances, a few tests were run on voluntary participants. Commencing in 1955, under an informal arrangement with the Federal Bureau of Drug Abuse Control, tests were begun on unsuspecting subjects in normal social situations ... In 1963, the Agency devised new criteria for testing substances on human subjects. All further testing of potentially dangerous substances on unsuspecting subjects was prohibited. Between 1963 and 1967, some testing of drugs continued, but only on voluntary subjects, primarily inmate volunteers at various correctional institutions. In 1967, all projects involving behavior-influencing drugs were terminated."⁴³

The committee related one tragic incident:
"On one occasion during the early phases of this

program (in 1953), LSD was administered to an employee of the Department of the Army without his knowledge ... Prior to receiving the LSD, the subject had participated in discussions where the testing of such substances on unsuspecting subjects was agreed to in principle. However, this individual was not made aware that he had been given LSD until about 20 minutes after it had been administered. He developed serious side effects and was sent to New York with a CIA escort for psychiatric treatment. Several days later, he jumped from a tenth floor window of his room and died as a result ... Reprimands were issued by the Director of Central Intelligence to two CIA employees responsible for the incident." A footnote is added: "There are indications in the few remaining Agency records that this individual may have had a history of emotional instability."⁴⁴ The Church Committee also made reference to this: "... in secret and without effective controls, the CIA undertook programs for testing chemical and biological agents on unwitting Americans, sometimes with tragic consequences."⁴⁵

The documents found in 1977, according to a statement by CIA Director Stansfield Turner to several

Senate Committees, "give greater insight into the scope of the unwitting drug testing, but contribute little more than that."⁴⁶ Admiral Turner also noted: "Most of the people and institutions involved are not aware of CIA sponsorship. We should certainly assume that the researchers and institutions which cooperated with CIA on a witting basis acted in good faith and in the belief that they were aiding their government in a legitimate and proper purpose."⁴⁷ He emphasized that the experiments, conducted under what had been called "Project MKULTRA," were "12 to 25 years in the past ... CIA is in no way engaged in either witting or unwitting testing of drugs today."⁴⁸

Press coverage of the details -- both old and new -- was extensive. Emphasis was variously placed on historical background,⁴⁹ the involvement of some unwitting subjects,⁵⁰ unusual elements that might be repugnant or titillating,⁵¹ or questionable relevance to CIA's mission.⁵²

Occasionally a researcher, even though unaware of CIA sponsorship at the time, nevertheless concluded that the research had been legitimate.⁵³ Up to a point, Phillips also found that he "could rationalize" drug-testing, "knowing that LSD was invented and marketed in the early 1950's by a single scientist

and a single laboratory in Switzerland. The United States found that most of the production of the new drug was being shipped to Moscow. There were many questions to be answered, especially after brain-washing emerged from the Korean War."⁵⁴ And on 21 September 1977, a former CIA official, who had played a leading role in the MKULTRA program, defended it in a Senate subcommittee hearing as "indispensable at the time" in view of "tangible evidence that both the Soviets and the Red Chinese might be using techniques of altering human behavior which were not understood by the United States and which would have implications of national survival."⁵⁵ According to one newspaper article, CIA officials (not further identified in the report) "were aware that it was considered unethical to experiment on people with drugs without their knowledge, but they decided that 'unwitting' testing was essential if accurate information on LSD and other substances was to be obtained."⁵⁶

But Phillips felt differently: "Without question, conducting the drug research on unwitting persons or in a manner that could lead to suicide, as in the instance of one man, was unjustifiable."⁵⁷ "In accordance with its present guidelines," the

Rockefeller Commission said, "the CIA should not again engage in the testing of drugs on unsuspecting persons."⁵⁸ "Abhorrent" was Admiral Turner's term for MKULTRA tests run on unsuspecting human subjects.⁵⁹

(3) Collection of Information:

CIA personnel in the United States, Colby testified, "collect foreign intelligence here. Much information on the world is available from private American citizens and from foreigners within the United States ... CIA's ... representatives in 36 American cities ... contact residents of the United States who are willing to share with their Government information they possess on foreign areas and developments. They provide this information voluntarily, in full awareness that they are contributing information to the Government. They are assured that their relationship will be kept confidential and that proprietary interests, say on the part of a businessman, will not be compromised. This program focuses exclusively on the collection of information about foreign areas and developments."⁶⁰

The collection of foreign intelligence from residents of the United States who voluntarily provide it has been the least controversial of CIA's domestic activities. As a rule, what criticism there has been

has rested on fundamental objections to any form of confidential relationships between private individuals and an intelligence agency, perceived to be incompatible with certain professional standards and obligations. We shall leave the specifics for our discussion of CIA's relationships with various groups and institutions. In general, CIA's critics have focused on subjects other than collection.

We might add two quotations to Colby's summary. One comes from General Graham: "It is hard to overestimate the value of information obtained without remuneration from U.S. citizens who travel or work abroad and from friendly foreign nationals who, out of simple patriotism or sympathy to our country, provide information. It is also hard to overestimate the future damage to our intelligence that will result from the new need for such people to weigh their cooperative inclinations against the possibility of their public identification with such 'wicked' organizations as the Central Intelligence Agency ..."⁶¹

The other quotation is from the Rockefeller Commission's report: "The CIA's efforts to collect foreign intelligence from residents of the United States willing to assist the CIA are a valid and necessary element of its responsibility. Not only do

these persons provide a large reservoir of foreign intelligence; they are by far the most accessible source of such information. The ... files on American citizens and firms representing actual or potential sources of information constitute a necessary part of ... legitimate intelligence activities. They do not appear to be vehicles for the collection or communication of derogatory, embarrassing, or sensitive information about American citizens."⁶²

The final part of that quotation, of course, alluded to more controversial means of collection, discussed earlier in our paragraphs about investigative techniques.

c. Relationships with Groups, Professions, and Institutions:

(1) The Media:

Collectively, the media and the government's intelligence organizations have much in common. Both are in the business of collecting and distributing information; their topical interests often coincide or overlap; both analyze as well as report world events; both find it essential to protect the identity of confidential sources and relationships; and both trace their mission ultimately to a need to serve the American public. The differences are equally significant: Intelligence represents the government,

the media stress their independence from it; intelligence is subject to institutional control, the media are protected from control by the First Amendment to the Constitution; intelligence is geared to serve, inform and advise the nation's leaders in confidence, the media see public criticism and exposure as a major part of their job; intelligence must try to fill informational gaps without regard to breadth of interest, the media must look for newsworthiness and impact.

Articulation is the media's business, government one of their prime targets, and secrecy one of their main obstacles, and their rights and position are an understandable preoccupation. It follows that published material on CIA's media relationships has reached mountainous proportions. We shall resist here any temptation to discuss the fundamentals of the First Amendment, to cover the whole issue of media vs. government, to analyze the depth, accuracy and fairness of media reporting on CIA, or to cover the waterfront in some other way. What concerns us are some limited aspects of media-CIA co-existence, with special reference to the question of the ethics of newsmen's cooperation with CIA.

In gathering material for information and comment, members of the Fourth Estate can treat -- and have treated -- CIA as both a source and a target, and have seen themselves as having common as well as adversary interests. Collaboration and adversary activity, although on opposite ends of the scale, are both logical derivations of a complicated set of relationships. Sometimes, civic and professional precepts have, in the eyes of people in and outside the news business, appeared to conflict.

These conflicts have, first, raised questions in terms of media responsibility, implicit in some parts of our earlier discussion of secrecy vs. disclosure. By quoting here a few of the many applicable passages that have been written with special reference to the media, we hope to provide a backdrop for the more specifically ethical issues that have been raised.

The following examples should suffice: Ransom: "Another form of control in a democracy can come from a free press and from inquiring scholarship. In time of all-out war even the free press and independent scholars are generally willing to subject themselves to various forms of self-censorship. In times of cold war or limited war the issues of security, secrecy, and censorship become very confused as we have seen

in the case of the Ellsberg and Anderson papers and related matters."⁶³ -- Colby: "There is a final control, of course, in the fact that some of our activities, if badly handled, come to public attention in a somewhat clamorous way ... As for the question of how to check on CIA, I think the press does a superlative job of catching us whenever they can."⁶⁴ -- Chicago Tribune editorial: "We know of no way ... except the way that has in fact been used: to explore, fully and mercilessly, CIA transgressions against the rights of American citizens."⁶⁵ -- Columnist Anthony Lewis: "After these (Glomar Explorer) papers, it will be harder for journalists to believe in their self-image as a tough, skeptical lot, immune to government cajolery. One hopes it will also be harder for anyone to believe official claims, so often made, that the sky will fall in if some secret document is disclosed."⁶⁶ -- Barnds: "The disclosure of intelligence activities in the press in recent years is a clear national liability ... Voluntary press restraints would have to be accepted by virtually the entire newspaper, magazine, radio and television industry ..."⁶⁷ -- Lefever: "... media have acted as though they were above the law by arrogating to themselves the decision

of whether the disclosure of certain classified information would or would not harm the national interest. This responsibility rests with the democratically elected representatives of the people, not with any self-appointed elite."⁶⁸ -- Tom Bethell and Charles Peters: "To expect the press, as custodian of morality in government, to police itself ideally here, with selling papers, reporters' status, and others self-interested issues so heavily at play, is asking too much."⁶⁹ -- And a somewhat different note by Colby: "Sometimes the journalist assumes that the story can do no harm when, in reality, there are unrevealed facts about it which would change the journalist's mind."⁷⁰

A major ethical issue has arisen less in terms of mere secrecy but of CIA's deception practices, principally in the name of Special Activities. The Church Committee addressed itself to this: "In examining the CIA's past and present use of the U.S. media, the Committee finds two reasons for concern. The first is the potential, inherent in covert media operations, for manipulating and incidentally misleading the American public. The second is the damage to the credibility and independence of a free press which may be caused by covert relationships with U.S.

journalists and media organizations. ... The Committee recognizes that other countries make extensive use of the international media for their propaganda purposes. The United States public is not insulated from this propaganda either. It is clear, however, that the strongest defense a free country has from propaganda of any kind is a free and vigorous press that expresses diverse points of view. Similarly, the most effective way for this country to respond to the use of propaganda abroad is to permit American journalists and news organizations to pursue their work without jeopardizing their credibility in the eyes of the world through covert use of them."⁷¹ -- Stuart H. Loory also pointed an accusatory finger at deception aimed at foreign publications: "That such a story might find its way back into American newspapers and broadcasts was considered by the CIA an unfortunate by-product of the holy war to save the world from communism."⁷²

A separate but related issue has been tied not merely to the question of press involvement -- voluntary or other -- in CIA-originated deception, but to that of secret ties between individual newsmen and news organizations and CIA because, in Roy Fisher's words, "journalists' access would quickly disappear ...

if these target groups began to identify the press as instruments of the government."⁷³ Loory presented the case: "There is little question that if even one American overseas carrying a press card is a paid informer for the CIA, then all Americans with those credentials are suspect ... Some ... independence has, with the stealth required of clandestine operations, been taken from us -- or given away ... Any American journalist overseas who takes money from the CIA contaminates the reputations of all American foreign correspondents ... If foreign sources come to mistrust American journalists because of a suspected dual allegiance, the American public will be ill-served."⁷⁴ An obvious corollary conclusion was formulated by Professor Blum: "Members of police and intelligence agencies must be prohibited from masquerading as journalists."⁷⁵

Few of CIA's covert relationships with personnel in the news business, either for purposes of cover or collaboration, had involved staff members of American publications; and in early 1976, when the Church Committee looked at the situation, the total figure -- including journalists whose contact was "unpaid, occasional, covert" -- was "approximately 50."⁷⁶ As early as 1973, Colby had ordered not only

a continuation of the "prohibition against placement of material in the American media," but had declared a "general policy" of not making "any clandestine use" -- specifically including cover -- "of staff employees of U.S. publications which have a substantial impact or influence on public opinion," and had initiated a "thorough review ... of CIA use of non-staff journalists; i.e., stringers and free-lancers," with the "goal ... to reduce such usage to a minimum."⁷⁷ And on 11 February 1976, CIA Director George Bush had announced new guidelines: "Effective immediately, CIA will not enter into any paid or contractual relationship with any full-time or part-time news correspondent accredited by any U.S. news service, newspaper, periodical, radio or television network or station."⁷⁸

Nonetheless there was widespread condemnation, primarily in media circles, of newsmen who had cooperated with CIA, and there were demands for steps ranging from exposure to dismissal, as well as media attempts to identify collaborators. At the conclusion of a lengthy article on the subject, Richard Harwood and Walter Pincus commented on "the whole issue of journalists and the CIA. Little is known as fact; much is suspected. In these circumstances, even the normal and necessary dealings between journalists and the CIA

are subject to dark imaginings. It is a condition that will continue so long as the truth is buried in the CIA vaults at Langley."⁷⁹ The prestigious Walter Cronkite, in denying any CIA relationship of his own, told his listeners that "the practice of newsmen secretly reporting to intelligence organizations under any circumstances is abhorrent, a violation of journalistic ethics and integrity, a danger to all correspondents and a serious impediment to the free collection and flow of information. It's virtually impossible for a news organization to protect itself against the heinous practice except to fire any newsman caught indulging in it. And that's the CBS news policy."⁸⁰ Carl Bernstein, known for his contributions to the Watergate exposures, turned his investigative eye to "the CIA's use of the American news media" which he found "much more extensive than agency officials have acknowledged publicly or in closed sessions with members of Congress." His estimate was that "at least 400 American journalists" had been involved over the past 25 years, among them Joseph Alsop. (Alsop cheerfully admitted that "I've done things for them when I thought they were the right thing to do ... Stew [Alsop's late brother] and I were trusted, and I'm proud of it.") Bernstein included an allegation, attributed to a CIA source, that "under

arrangements approved by the newspaper's late publisher" The New York Times had "provided cover for about 10 CIA operatives between 1950 and 1966." (The present publisher denied knowledge of this.)⁸¹

As Alsop's reply to Bernstein's charges suggests, opinion on the ethics of collaboration has been far from unanimous. Examples of arguments in support of CIA ties were included in Loory's article, from which we have quoted excerpts supporting a contrary position. One story about a newsman cooperating with CIA was attributed by Loory to a former CIA station chief: The newsman "was free to file whatever he wanted. We never interfered with that. I always tended to think that newsmen and ourselves were in the same business anyhow. We all collected information. And this was just some information he couldn't use in the paper for space reasons or because no one else was interested." In another case, Loory was able to cite a name: "When Joseph Harrison became overseas editor of the Christian Science Monitor in 1950, he discovered that agents had been frequently visiting his predecessor to question him about Monitor stories. 'I inherited the situation and I continued it,' Harrison said recently. 'I did it because we were Americans and we were helping out. Don't forget, this was during the

Cold War. And everybody was doing it. They may deny it now. But they were doing it.'"⁸² Regarding more current CIA positions, Loory noted that "Colby himself will not speak for the record on the subject; an authoritative source represents the director as thinking that the agency's employment of stringers, free lances and employees of more obscure outlets does not compromise American journalism. The source does not make clear how Colby draws such distinctions; he leaves the impression that Colby does indeed wish to use any aid the news business is willing to give."⁸³

One of those taking a pro-CIA position, General Graham, chose to counter-attack: "There is much pious tongue clucking about the CIA's use of journalists ... Much of this neo-piety on the part of the press is sheer hypocrisy. There are few brands of deviousness and skull-duggery out of bounds to newsmen in digging out information for their own purposes."⁸⁴

And Bernstein's report prompted a number of replies. "This is a confession," wrote Merrill Panitt of TV Guide. "I am not certain whether my name appeared in the CIA files that evidently were made available to Bernstein. But I was associated with the CIA in September 1958." Panitt, about to visit the

Soviet Union, had been asked by a CIA man to report his impressions when he returned. He had readily responded. "In today's climate, what would a young newspaper or television reporter do if the CIA approached him with the same request ...? Would he consider that if he cooperated he might some day be accused of betraying the pristine profession of journalism? ... You bet he would ... The press and TV have given all too many of us the idea that ... excesses were the chief, and possibly only, activity of the agencies ... with the legitimate and absolutely necessary functions of those agencies all but forgotten ... The CIA, despite what you have read in your newspapers and seen and heard on television, is not the enemy ... I still don't see anything morally or journalistically wrong in a member of the press giving information or observations to the CIA on a one-time or even regular basis. If an American correspondent has knowledge that might help his country, is he honor-bound to keep it from his country? Is he a journalist first and an American second? Our priorities need some attention."⁸⁵ -- George F. Will took issue with Bernstein's criteria as well as with the underlying attitude of condemnation of press-CIA cooperation: Bernstein had cited Alsop's case "as an example of

how journalists 'have secretly carried out assignments for' the CIA. Actually only God, and He only deferentially, could give Alsop an 'assignment.' ... No reporter should be a paid agent, because (among other reasons) his life may depend on being able to deny such a relationship convincingly. But few other forms of cooperation are inherently, meaning 'in all situations,' impermissible. Life is not so safe and simple, and journalists are not so special, that they have no obligations except to the professional code they write for themselves ... No simple catchphrase explains the proper relationship of newspeople to their government. But the problem with the 'adversary relationship' can be stated simply: Journalists are, if not citizens first, at least citizens also."⁸⁶

Few thoughtful observers would deny that journalists have been, and are, beset by many conflicting but genuine considerations, and that attempts to design a generally applicable code of ethics to govern press relationships with CIA are apt to founder in a sea of individual concerns and interpretations. Loory saw some of the conflicts: "Part of the problem stems from the news business' need for cooperation of the CIA and other intelligence agencies. This fosters a love-hate relationship that blurs ethical

considerations. ... Is it possible to provide information to the agency, and still remain truthful to the public? Colby feels it is, even if money changes hands. Some newsmen feel that the payment of money is the only serious compromise. Many disagree ... And some journalists feel it is bad form to criticize a colleague who has made only a few bucks moonlighting. They are also uneasy that the whole tangled web of relationships between reporters and intelligence agents so beneficial to reporters will come apart."⁸⁷ Fisher also made pertinent observations: "On one hand, the newsman needs cooperative sources within the government ... At the same time, the reporter's ability to provide the government with a channel to the public serves as the quid pro quo in this relationship ... Another aspect of the dilemma is that every newsman knows that to maintain the credibility of his freedom, he must remain independent from -- and at times, a public adversary of -- that same government ... Generally, this system of co-equality has worked reasonably well, although at times the strains of its inherent conflict have threatened (or at least, seemed to threaten) the existence either of the press or of the government."⁸⁸

(2) Scholars and Academic Institutions:

CIA's relationships with members and segments of the academic community have drawn questions and comments in much the same way as in the debate over journalistic ethics. Critics have seen various types of CIA-academic collaboration as affecting professional credibility and the integrity of scholars and scholarship.

In most respects, the terms of reference had been established in 1967, with the uproar over covert CIA financing of American student activities abroad, and with the Katzenbach Committee's investigation of those relationships, described in our survey of public opinion during CIA's history. Some comments, cited here for purposes of perspective, date back to that period, as, for instance, Dr. Hans Morgenthau's conclusion that "internationally, all individuals and organizations, speaking on behalf of the United States, will from now on be suspect as secret agents of the government ... there will be the suspicion but not the reality of totalitarian control."⁸⁹ In the same time frame, J. William Fulbright observed: "Even if ... there is real value in the participation of young Americans in international student meetings, by no stretch of the imagination can these be regarded as

the kind of life-and-death matter which might, on rare occasion, justify the circumvention of democratic procedure."⁹⁰

In the wider content of academia vs. CIA, there have been several levels of criticism: Scholars who wittingly but secretly collaborate with CIA practice a form of deception and lose their integrity; those who unwittingly perform a service for or get paid by CIA are victims of government deception which compromises the integrity of their purpose; those who openly help CIA thereby support an agency that represents secrecy and deception (or worse), all incompatible with academic ideals. A small sampling of quotes illustrates these points. "The infiltration of private organizations forces people to defend their 'cover stories' and lose their integrity," Halperin and Stone wrote. "Friends become unsure whether they can believe each other. Persons wonder whether they should accept funds from this foundation or that."⁹¹ Irving L. Horowitz, referring to Michigan State University's participation in a secret police training program for South Vietnam, said this: "If universities begin to behave as adjuncts to policy, we will have gone a long way toward the sort of relationship between social science and public policy that obtains in the totalitarian states: a

relationship of government commands and scientific obedience to those commands ... The dilemma for social science in America, raised to new heights by the MSU-CIA project, is simple but devastating: at the very moment when the social sciences are becoming capable of resolving their traditional problem of data reliability, they are faced with the pressing problem of credibility of the social scientists ... Each and every practicing social scientist must answer anew: Is he a member of a human science or of an anti-human science?"⁹² Richard M. Stephenson, sociology professor at Douglass College of Rutgers University, after finding out in 1977 that a Hungarian refugee interview and analysis program he had worked on twenty years earlier had been covertly sponsored by CIA, had the following complaints: "Being the last to know ... was itself an affront ... compounded by the realization that I was victimized by an agency of my Government ... In the same way, my university has been compromised and, by extension, my profession ... But ... more serious ... I was caused to violate a cardinal principle of research by unwittingly misrepresenting myself to my respondents ... Still more serious was the real or potential violation of the respondents' anonymity and the confidentiality governing an interview situation ... I do

not know if agents of the C.I.A. had access to these files ... I do know now that ... the subjects of my research were placed in varying degrees of potential jeopardy ... Furthermore, since respondents frequently discussed personal feelings and experiences, they were exposed to the possibility of disclosure that at least might be embarrassing ..."⁹³

On the other side, Cline considered "an intellectual partnership between scholars and spies ... the best formula for successful intelligence collection and evaluation."⁹⁴ On that same subject -- academics' contributions to intelligence -- the Church Committee thought "the majority of these relationships ... asking an academic about his travels abroad or open informal consulting on subjects of the academics' expertise" constituted "no danger to the integrity of American private institutions ... indeed, there are benefits to both the government and the universities in such contacts." Nor did the Committee object to "relationships with university administrators ... usually contractual," which "enable the CIA to approach suitable students for CIA employment." But: "The 'operational use' of academics is another matter. It raises troubling questions as to the preservation of the integrity of American academic institutions ...

The CIA considers these operational relationships ... as perhaps its most sensitive domestic area and has strict controls governing these operations ... In addressing the issues ... the Committee is keenly aware that if the CIA is to serve the intelligence needs of the nation, it must have unfettered access to the best advice and judgment our universities can produce. But this advice can and should be openly sought -- and openly given ... Nevertheless, the Committee does not recommend a legislative prohibition on the operational exploitation of individuals in private institutions by the intelligence agencies. The committee views such legislation as both unenforceable and in itself an intrusion on the privacy and integrity of the American academic community ... it is the responsibility of ... the American academic community to set the professional and ethical standards of its members."⁹⁵

An attempt to set such standards was made in May 1977 by Harvard University with a set of guidelines, in essence providing that any CIA-university contacts must be public, private consultation arrangements must be reported in writing to dean and president, CIA recruiters must be identified in writing to dean, president and placement office, Harvard community members may not volunteer names of other members

without their permission, and members should not undertake intelligence operations for CIA. The agency's reaction was conveyed by Admiral Turner to the president of Harvard in the following terms:

"... American scholars who have been willing to share information and interpretations of developments in the international arena often have contributed valuably to intelligence support to the U.S. foreign policy-making process. Without the continuing assistance of the academic community, our ability to provide the President and other senior officials with objective and enlightened analysis and estimates would be hampered. I believe strongly that in this increasingly complex and competitive world it remains in the best interests of both the academic and intelligence communities to expand and refine their contacts in a spirit of mutual respect and understanding.

"... Current CIA policy covering our relationships with American staff and faculty members of U.S. academic institutions is already, to a large degree, consistent with the Harvard guidelines. Present Agency policies may be summarized as follows:

"All of our contracts with academic institutions are entered into with the knowledge of appropriate senior management officials of the institution concerned.

"All recruiting for CIA staff employment on campus is overt.

"It is against our policy to obtain the unwitting services of American staff and faculty members of U.S. academic institutions.

"... I take exception to the provision in your guideline which requires your faculty members to report such arrangements in writing to the dean of their faculty ... I believe that attempts to regulate the private lives of our citizens in a manner discriminatory to any particular group, profession or segment of society poses serious risks. I believe that we would be far safer not to single out any group, despite what may be transient enthusiasm for so doing. In point of fact, it is our policy in these cases to suggest to individual scholars that they inform appropriate officials at their universities of their relationship with CIA. Frequently, however, scholars object to advising any third parties on the understandable grounds that to do so would violate their constitutional rights to privacy and free association and possibly expose them to harassment and damage to their professional careers ... Thus, the decision on whether to advise their institution of a relationship with CIA is left to the discretion of the individual. We intend to continue respecting the wishes of individuals in this regard."⁹⁶

The year before, another CIA Director had similarly responded to a challenge. Professor William W. Van Alstyne, on behalf of the American Association of University Professors, had asked George Bush "take steps to end the exploitation of the academic community and to disengage the Agency from covert activities which induce academics to betray their professional trust." Bush had replied, in part, as follows:

"We seek the voluntary and witting cooperation of individuals who can help the foreign policy processes of the United States. Those who help are expressing a freedom of choice. Occasionally such relationships are confidential at our request, but more often they are discreet at the scholar's request because of his concern that he will be badgered by those who feel he should not be free to make this particular choice ... If CIA were to isolate itself from the good counsel of the best scholars in our country, we would surely become a narrow organization that could give only inferior service to the government."⁹⁷

(3) The Clergy:

The Katzenbach Committee's guidelines inhibiting covert support for American educational or private groups and internal CIA directives restricting operational relationships with members of those groups applied, of course, with special force to the clergy. The Church

Committee called operational use of religious organizations "a special case, in that virtually all religions are inherently supra-national. Making operational use of U.S. religious groups for national purposes both violates their nature and undermines their bonds with kindred groups around the world." There also was "the question of the confidentiality of the relationships among members of the clergy and their congregations."⁹⁸

For those who might ask why there has nevertheless been no major outcry in this area, the Church Committee again provided a clue: "The number of American clergy or missionaries used by the CIA has been small." The Committee concluded "that neither this country's capacity to collect intelligence nor its covert action capability would be seriously affected by a total ban on their operational use."⁹⁹ In February 1976, CIA, for its part, had already announced that it had "no secret paid or contractual relationship with any American Clergyman or missionary. This practice will be continued as a matter of policy."¹⁰⁰ In this case, it appeared, there was in a practical sense no conflict between ethical principle and operational need.

(4) Business and Proprietaries:

In terms of ethical considerations, CIA contacts and dealings with individual businessmen and

private commercial firms -- as a rule pursued by CIA either to obtain foreign intelligence or to arrange cover for CIA personnel -- should be in the same category as relations with other Americans in private life. However, complaints from businessmen about CIA intrusion have, for whatever reason, never reached the decibel count of those from the professional groups; in fact, CIA has traditionally enjoyed a broad base of support in the American business world. Some members of firms doing business abroad have at times sought to keep their distance from the official American establishment which, in their view, was an impediment rather than a help in dealing with their foreign counterparts; but this has been merely one of many different attitudes, has reflected pragmatic judgment rather than principle, and has usually not singled out CIA as a special problem.

One institution peculiar to CIA's role in the commercial field has been the so-called proprietaries -- business units owned by CIA, and either actually engaged in commercial activities or performing other missions under the guise of private business. The Church Committee defined the ethical issue as follows: "In our society ... that which is governmental is generally distinct from that which is private. Traditionally, problems have developed when the government

has crossed into the private sector. Proprietaries are no exception to this dilemma. They are, in fact, the embodiment of it. Thus, the fundamental question ... is: can a free and open society tolerate such a confluence of conflicting roles?" The answer: "The Committee concludes that it can, provided that the Congress plays a role in the supervision of these mechanisms to ensure that the delicate balance struck in our society between governmental and private actions is maintained. While there may have been a temptation to view proprietaries as 'abusive' per se, this attitude was eschewed by the Committee. Although there are potential problems with proprietaries, the Committee feels that aggressive oversight can protect the rights of American citizens and institutions without the need for a ban on the use of proprietaries which serve a legitimate intelligence function."¹⁰¹

The Church Committee listed five chief purposes for which proprietaries had been used: cover for CIA projects; extension of the Agency's influence and information network in the overseas business community; support for covert operations; operation of propaganda mechanisms; and management of private investments (not acknowledged by CIA as a purpose of proprietaries). In general,

the Committee concluded, the Agency had "employed proprietaries when they have been the only way, or clearly the best way, to achieve an approved objective."¹⁰²

The Church Committee report cited an illustration of potential conflicts between government and private interests: the case of a private air carrier whose manager protested that potential passengers were being diverted to a CIA-operated airline. CIA conceded that some passengers were travelling on CIA's rather than on privately owned aircraft, but declared the impact "minimal and unavoidable." The Civil Aeronautics Board, after hearing both sides, eventually decided in CIA's favor.¹⁰³

(5) Other Offices of Government (Law Enforcement, Courts):

CIA's friends and spokesmen have emphasized, and even its severest critics have fundamentally understood, that CIA was not designed, and cannot be expected, to operate in isolation within the official establishment. Indeed, the demands for stronger supervision and stricter guidelines have envisaged clearer lines of communication and contact as well as of separation. The basic need for CIA, if it is to have any purpose at all, to exchange some information and support with other government entities has not been

responsibly questioned.

Some particular arrangements and practices, however, have brought objections. One pertains to CIA's use of cover which, in Halperin's and Stone's opinion, caused "the credibility, efficiency, and authority of State Department officials" to be "undermined."¹⁰⁴ This has little bearing on the issue of CIA's function in our society, however.

More relevant are charges, related to those discussed under "Investigative Techniques," that CIA's liaison with law enforcement organs violated its charter and constituted -- or developed into -- a role in domestic and legal affairs, and that it played a special role in legal proceedings which hindered the judicial processes.

One aspect of this was CIA's part in helping to train local police. Quoting the New York Times of 17 December 1972, according to which "CIA had secretly provided training to fourteen New York City policemen," and citing CIA acknowledgements that "similar courtesies" had been extended to other police departments, Marchetti and Marks saw CIA's hesitation in revealing such "a relatively harmless activity" as an indicator of more far-reaching "unsavory" involvement.¹⁰⁵ Thomas B. Ross, in quoting from Marchetti and Marks, regarded the

police training as an apparent breach of "the express prohibition against 'police, subpoena, law-enforcement, or internal security functions.'"¹⁰⁶ Colby, of course, perceived it differently: The "friendly liaison relationships" with a number of police forces "from time to time included various mutual courtesies which have been warped into allegations of improper CIA manipulation of these police forces for domestic purposes. These allegations are false."¹⁰⁷

Regarding CIA's liaison with the Department of Justice and the Agency's participation in interagency intelligence groups, it seemed to the Rockefeller Commission that those arrangements had "resulted from attempts to utilize the CIA's expertise in intelligence evaluation and its collection of intelligence abroad as having a bearing upon domestic dissidence ... The statutory prohibition on internal security functions does not preclude the CIA from providing foreign intelligence or advice on evaluation techniques to interdepartmental intelligence evaluation organizations having some domestic aspects." The Commission nevertheless warned against CIA's participation in meetings "concerned wholly with domestic matters," lest there be an "appearance of impropriety."¹⁰⁸

The Rockefeller Commission had more of a problem with CIA's responsibilities in certain cases

calling for criminal investigation and prosecutorial decisions: "In 1954, the CIA pointed out to the Department of Justice that, in many cases involving CIA, prosecution would require public disclosure of sensitive Agency operations and procedures. Even investigation and prosecutive consideration by outsiders would disseminate this information more widely than the Agency believed appropriate. The Department of Justice responded that the Agency should investigate such allegations affecting its operations. If, after investigation, it appeared that prosecution would be precluded by the need to reveal sensitive information, the Agency should so indicate in its files and not refer the case to the Department of Justice. In doing this, the Department of Justice abdicated its statutory duties and placed on the Director of Central Intelligence the responsibility for investigating criminal conduct and making the prosecutorial decision -- clearly law enforcement powers. (There is, however, no evidence that these powers were ever abused by the Agency.)"¹⁰⁹

How CIA's requirement for the protection of sources and methods could affect prosecution and judgment has several times -- even though not often -- been demonstrated in court proceedings. One celebrated case was that of a slander suit brought in November

1964 by one Estonian emigre, Eerik Heine, against another, Juri Raus, who had accused Heine of being a Communist and a Soviet intelligence agent. Raus's lawyers submitted affidavits from then Deputy Director Richard Helms that their client had been "acting within the scope and course of his employment by the Agency on behalf of the United States" and that the disclosure of further information "would be contrary to the security interests of the United States."¹¹⁰ In December 1966, the suit was dismissed, with the court concluding "that activities by the CIA to protect its foreign intelligence sources located in the United States are within the power granted by Congress to the CIA."¹¹¹ After a series of appeals, the Supreme Court refused in April 1971 to review the suit.¹¹²

On the surface there is a relationship between the Raus-Heine controversy and CIA's successful suit, begun in April 1972, to restrain Victor Marchetti, co-author of CIA and the Cult of Intelligence, from including certain items of information in his book.¹¹³ In substance, the reasons for CIA's seeking injunctive relief against Marchetti were similar; but the grounds were different: As a CIA employee, Marchetti had signed a secrecy agreement, and CIA went to court to enforce that part of his employment contract; and while

Heine had alleged slander, Marchetti's position, as Borosage noted, was based on his rights under the First Amendment which, he maintained, made the secrecy agreement illegal.¹¹⁴

First Amendment rights were also cited by former CIA employee Frank Snepp, author of Decent Interval, a book describing and criticizing CIA's role during the final phase of the war in Vietnam. Unlike Marchetti, however, Snepp and his publisher had decided against clearing the text in advance with CIA, Snepp's secrecy pledge notwithstanding. Taken to U.S. District Court for violation of his employment contract, Snepp and his lawyer not only claimed overriding Constitutional rights, but maintained inter alia that the book contained no legitimately classified information. In a decision found controversial by most media observers and subsequently appealed, the court ruled on 7 July 1978 in the government's favor and ordered the impoundment of Snepp's profits from the sale of the book. On 20 March 1978, an Appeals Court remanded the case to the lower court for reconsideration of the penalties, but affirmed the validity of the secrecy pledge as well as CIA's right to pre-publication review.¹¹⁵

d. Truth and Consequences:

One aspect of the ethics issue that is yet to be mentioned is the occasional conflict individual CIA

members have faced when civic and intelligence obligations have appeared to clash. Phillips brought up a not-so-hypothetical case: "Just take the routine matter of a deep-cover agent applying for a U.S. passport as an American businessman. Technically, he is in violation of U.S. law when he lists his occupation as 'businessman' instead of 'CIA deep-cover agent' on his passport application. Or, what is this same individual going to do when he is caught up in a U.S. census survey requiring subterfuge on his part? Many situations that are more complex and tricky -- and consequently grayer -- arise frequently. Yet there is absolutely no intent to violate U.S. law, but to pursue U.S. interests overseas through clandestine operations that, unfortunately, require cover to be developed on home soil." Phillips offered no solution other than to suggest that "ground rules should be established by some authority outside the agency."¹¹⁶

The case that, more than any other, dramatized the basic problem was the prosecution of former CIA Director Richard Helms for failing on two occasions to testify fully and accurately to a Senate committee questioning him about CIA activities in Chile. Helms's contention was, essentially, that he had been caught in a dilemma between his oath to give full, accurate and complete testimony to a Senate committee and his earlier oath to protect government secrets. The Justice

Department, while recognizing the dilemma, maintained that Helms's paramount duty had been to testify fully, completely, and accurately, and that something had to be done to "uphold the authority of the law and the Congress."¹¹⁷ Citing, inter alia, the costs of a trial, the possible jeopardy to national secrets and Helms's "most distinguished career," Attorney General Griffin Bell -- reportedly skeptical about prospects of a jury conviction -- and the Justice Department, with the President's support, struck a plea bargain under which Justice agreed to recommend a minimum suspended sentence in return for a plea by Helms of nolo contendere (No Contest).¹¹⁸ Rejecting the plea bargain, Judge Barrington D. Parker on 4 November 1977 gave Helms the maximum sentence, with the jail term suspended, as well as a tongue-lashing in which he charged Helms with having considered himself "bound to protect the agency ... and to dishonor your solemn oath to tell the truth before the committee," declared that "no one ... is above the law or is relieved from complying with it," and told Helms: "You now stand before this court in disgrace and shame." Helms's attorney, in contrast, afterward described the conviction to the media outside the court as "a badge of honor," and Helms asserted: "I don't feel disgraced at all. If I did anything else, I would have been disgraced."¹¹⁹

He told reporters that he believed "the difficulties which arose in the 1973 hearings are directly attributable to the uncertainty and confusion that surrounded the guidelines established by Congress itself for taking testimony from the Director of Central Intelligence," and urged clarification in order to spare his successors "from the unfairness of the dilemma."¹²⁰ (He took essentially the same position in a television interview about half a year later.¹²¹) At a press conference on 10 November, President Carter, asked by a reporter about the "badge of honor" facet of the controversy, rejected that phrase and declared that "a public official does not have a right to lie."¹²²

So much for the sequence of events. While the issue of conflicting obligations had existed for many years, it was pushed into the foreground of national consciousness by the multiple stimuli of the Helms affair. The long grand jury investigation, the decision to prosecute, the plea bargain and the government's decision to prosecute, the plea bargain and the government's rationale for it, the judge's decision and his statement in court, and the follow-up statements by Helms and his attorney progressively raised the level of public awareness, passion and comment. In this case as much as anywhere, that comment has served to illuminate the issues. A two-week sampling culled from three major dailies, beginning in late October 1977, is attached as Annex B.

e. Ethics and Domestic Activities - CIA's Position:

Former CIA Director Colby's description of CIA's domestic functions in 1975, as noted above under "Range of Activities," was correct then and, in all essentials, is correct now, with some re-definition of areas of legitimate CIA collaboration with other government agencies on matters of mixed foreign and domestic concerns. CIA's activities will not, under an overly broad interpretation of its charter, again be allowed to drift, or be steered, into regions uncomfortably close to law enforcement.

As for the actual methods used in the name of investigation and research, we unhesitatingly agree with our more responsible critics that there have been violations of law, charter and good sense, in the aggregate infinitesimal compared to the bulk of legitimate effort, but not to be either condoned or carried over into our future.

Some of what has been called improper remains controversial. We will, of course, be bound by the law of the land. But in ethical or civil rights-related terms, we can even now see nothing automatically reprehensible in the collection of any kind of background data and their retention in our files as material for research, provided their collection is germane to CIA's mission and their use is properly circumscribed. We do not share the contention that

the existence of personnel data, for instance, inevitably leads to misuse; on the contrary, CIA's files, under the protection of enforced secrecy and privacy laws, should be the safest repository anywhere. It also seems to us that the nation would be ill-served if Americans and resident aliens travelling abroad were not to remain subject to the same kind of scrutiny that is lawful within the United States.

There are other practices, now abandoned, that we can at least understand in the context of a bygone era, even though not necessarily advocate for the future. One of them was the collaboration with domestic organs, under strong Presidential pressures, in a search for possible links between foreign powers and domestic dissidents and, even in the absence of persuasive evidence of past linkage, in setting up the equivalent of a radar screen to spot any new developments. We can also understand, up to a point, how reports of Communist-conducted behavioral research could have stimulated American efforts in the same direction, lest we remain unaware of a potential enemy weapon of significance. We can even see some explanation, if no excuse, for the opening of mail between the United States and Communist countries, particularly since the privacy of that channel can hardly be assured

by American respect for it, and since there was a tendency in earlier days -- discernible inter alia in the wording of the previously cited Hoover Commission Report of 1954¹²³ -- to match those who were seen as the enemy measure for measure.

But occasionally the lines between reason -- even in Cold War terms -- and excess were crossed -- not too often, but too easily. Beyond that, there were undertakings -- such as the testing of drugs on unwitting subjects -- that we would not attempt to rationalize in either a past or a present context. Domestic responsibilities and limitations in the areas of investigation and research are subjects where legislative clarification is, from CIA's viewpoint, most necessary and where it is likely to be most beneficial.

The domestic collection program -- essentially confidential debriefings of residents of the United States travelling abroad and willing to provide information -- does not, in CIA's view, cause legitimate ethical problems. Those debriefed have the right to ask, for whatever reason, that their identity be protected, and CIA is obliged to provide that protection.

As to collaboration with CIA by members of various professions and private institutions, CIA's position was concisely stated by Admiral Turner in a note to CIA

employees in connection with his letter to the president of Harvard, quoted above under "Scholars and Academic Institutions": "This issue, of course, transcends the relationship with academics. All American citizens must continue to have the freedom to choose whether they want to cooperate with any government agency, and, if they choose to assist the CIA in its work, we must be able to ensure the confidentiality of that relationship."¹²⁴

In the case of academics as well as journalists and clerics, CIA has agreed to place certain restrictions, already stated, on operational involvement. But as a functioning agency of the U.S. Government, it needs to be supported by those whose freedom it helps to protect, not ostracized as some of its critics seem to favor.

We have referred briefly to the difficulties that may develop in civil or criminal proceedings where CIA's responsibilities to protect intelligence information have been at odds with the rights to discover relevant evidence and to receive effective assistance to counsel and a fair and public trial. In many cases, it has been the position of CIA that it could not disclose relevant data without violating the confidentiality of relationships with intelligence sources and jeopardizing continued access to needed information. Problems of this type, involving both intelligence sources and methods, have

been encountered in a growing number of civil and criminal cases as well as judicial proceedings under the Freedom of Information Act.

In one form or another, any such difficulties are brought to the attention of the court and of the appropriate Executive Branch officials. It is hoped that in cases where it can be reasonably and honestly demonstrated that the sacrifice resulting from the disclosure of sensitive information in the courtroom would be disproportionate to the benefit to be derived, disclosure can be avoided or limited and sensitive data protected.

It is the inherent nature of judicial proceedings to be unpredictable, however, and often novel in their development. Accordingly, each case raises new problems and the pattern of action will vary, depending on the particular circumstances of each. Little can be said in advance, other than that many of the decisions and recommendations that will be required are bound to be arrived at only after close and painful scrutiny. It can only be urged that these problems be approached in good faith and that decisions in each case be made in full awareness of all issues and consequences.

Lastly, there is the recurrent ethical conflict, both institutional and individual, between the obligation by CIA, and its past and present leaders and employees, to tell the truth to duly constituted executive, legislative and judicial authority -- and

to some extent, the public -- and the duty to protect classified data.

One aspect of this pertains to cover, a matter Colby called "most difficult for American intelligence," in contrast to foreign services which "can dictate to all the other agencies of their governments and ... to the society at large."¹²⁵ While CIA does not have the same power, it does have the same need. In order to operate clandestinely, it will continue to require cover arrangements from both official and private quarters. This means that its personnel and activities will in many cases have to be disguised, and that the disguise will have to be maintained and supported by people and organizations in the public and private sectors. While this has been seen as something to be criticized and is subject to rules and limitations, there is no way around the use of cover -- and thus a form of deception -- as an essential ingredient of CIA's function. CIA was glad to have this recognized by the Church Committee of the U.S. Senate and supported by other legislative bodies since then.

The second aspect, brought forcefully to the surface by the Helms case, pertains to formal testimony and, in a less legally compelling but still morally important respect, to public statements in other

forums. When is it proper to tell the truth, to evade, to refuse comment, to mislead, and to resort to outright falsehood?

To begin with, we believe that it would be idle here, as in so many other ramifications of the intelligence profession, to think or speak in terms of clear decisions and simple solutions. In the framework of our examination, terms like "disgrace and shame" and "badge of honor" are not subject to approval or disapproval; they are irrelevant. The conflicts we have to face are unfortunate; they are also genuine. Past and present priorities have a bearing on them; so does the fact that in any two cases, the weight of the opposing obligations is rarely alike.

We cite the change between past and present priorities not as a determinant of anyone's guilt or innocence, but rather as a factor in CIA's changing approaches toward making public statements. In earlier years, CIA avoided most difficulties by invoking a "no comment" policy. Where denial seemed more appropriate or necessary, the criterion was its plausibility rather than its accuracy. (We have quoted Colby on this.) The need to protect what was considered sensitive data appeared paramount, and was doubtless so regarded even by many of those who would have preferred a more forthcoming disposition on CIA's part.

The policy has changed. While there remain many things CIA cannot freely discuss, the agency tries to release information and to comment when it can. If something that has happened cannot be publicly admitted, CIA declines to discuss it; but it steers away from a false denial, however plausible. When it comes to official statements, with special reference to testimony under oath, CIA personnel are under instruction to tell the truth when they can, and to request permission either to remain silent or to go behind closed doors when their secrecy oath stands in the way of candor. The adoption of Congressional procedures combining a clearer allocation of responsibility for intelligence matters, and the provisions for the protection of privileged information after it reaches the appropriate committees, have considerably lightened the burden for CIA officers who find themselves on slippery ground between conflicting legal and ethical forces.

Has the problem thus been eliminated? Unfortunately, it has not. If comment is provided in some cases, a public refusal to comment in other cases can have the same results as confirmation. (If, for example, CIA has disclaimed any connection with a man captured by terrorists, it cannot expect to protect a captured

CIA agent by refusing comment.) Limited responses can provide clues to further discovery by persons unwilling to subscribe to -- or understand the reasons for -- restraints, or by skillful analysts beyond our borders. There may be insistence on public testimony in disregard of conflicting obligations. Under circumstances where failure to protect legitimate secrets effectively might, individually or cumulatively, have a shattering effect on human beings or national equities, simple truthfulness may prove to be an uncomfortable virtue. Just as the maintenance of cover, which we regard as necessary beyond all doubt, entails a degree of camouflage and deception, so does the maintenance and protection of activities whose success depends on secrecy.

We are -- obviously, we hope -- not saying that our officers should lie as a convenient way to escape from a squeeze not of their making. But the nation should realize that the squeeze has not been defined out of existence. We badly need legislation to provide for the observance of one obligation without the violation of another. We cannot say how this can or should be done, since the principles that have been invoked are, in theory, irreconcilable. But if the genius of our society for compromise is to prevail, we

suspect that the solution will be found in provisions that will seek to avoid rather than eliminate irreconcilable conflicts, and to substitute tolerance and understanding for confrontation.

ANNEX A

PUBLIC OPINION POLLS, 1973 to 1976

(Note: Following are the details of public opinion surveys on intelligence questions, discussed in summary form in Chapter B2 of the text.)

1. 1973:

The results of a Gallup Poll, published in various papers in August 1973, showed that while the FBI continued to enjoy broad -- even though declining -- popularity, CIA had a lower standing: only 23 per cent expressed a "highly favorable" opinion, with 44 per cent saying "mildly favorable," 12 per cent "mildly unfavorable," 7 per cent "highly unfavorable," and 14 per cent expressing no opinion. (The comparable figures for the FBI were 52, 33, 7, 4 and 4 per cent.) Age and political affiliation, the Gallup Poll found, made little difference. Of those registering an opinion, 78 per cent thus held positive views, with 22 per cent negative.¹

Poll results of a different, but not inconsistent, nature were announced by Louis Harris a few weeks later. By 45 to 24 per cent, a majority felt that CIA "was involved in the Watergate affair and other domestic spying activities"; and while most people believed "the White House staff was trying to get CIA and the FBI to cover up in the Watergate affair,"

46 per cent -- as against 33 per cent -- also thought the reputation of CIA had been damaged "by the way it was used."² This was more than 16 months before the New York Times began its series of articles accusing CIA of having conducted a "massive illegal domestic intelligence operation."

2. 1974:

Two Harris polls, taken late in the year, are of interest in terms of popular attitudes toward CIA. The first was undertaken primarily to examine the question of American intervention in Chile under Salvador Allende's regime. By a 60-to-18-per-cent majority, a cross-section of Americans felt it was "wrong for the United States to intervene in the internal affairs of Chile and to try to destabilize its government." At the same time, a narrow 43 to 39 per cent plurality was willing to accept CIA's role as "working inside other countries to try to strengthen those elements friendly to the U.S. and to weaken anti-U.S. forces." When asked to rate the job CIA was doing "as chief foreign intelligence agency of the U.S. government," the public gave CIA a 42 to 31 per cent vote of confidence.³

The second poll did not refer to CIA, but rather to governmental secrecy and abuse of power by the White House. A total of 79 per cent of those questioned thought it was "very important" to "make government less secret," and only 3 per cent felt it was not important at all; 63 per cent

wanted major emphasis placed on curbing "the power excesses of the White House," with 8 per cent opposed.⁴

3. 1975:

According to Harris Poll findings published in February 1975, a 62 to 21 per cent majority thought that, if CIA had "monitored the activities of as many as 12,000 individuals within the U.S. during the time of anti-Viet Nam war protests," as had been charged, CIA's conduct had been wrong. While 35 per cent were satisfied with the President's naming of the Rockefeller Commission, 49 per cent would have preferred a group independent of the White House; and 43 per cent -- as against 33 per cent -- were willing to "guess" that the probe would result in "another coverup."⁵

The assassination plot question was tackled in mid-year by three regional polls, with widely different results. When asked whether information on such plots ought to be made public, readers of the Detroit Free Press, by 57.1 by 42.9 per cent, said "no." "It's about time we think of national security first," was one of the reasons given by the majority; the minority view was exemplified by comments like: "We don't need the embarrassment of another cover up."⁶ But residents of Iowa, selected and questioned by the Iowa Poll, thought, by a 64-29 ratio, that the data should be released.⁷ Regarding possible justification, 66 per cent of the residents of the New York area contacted by the Daily News poll felt such plots were never justified, and 17 per cent said they could be.

(Another 17 per cent were not sure.)⁸ The two last-named polls also examined other questions: 34 per cent of the Iowans were not satisfied with the Rockefeller report, 28 were; 49 per cent thought CIA had seriously abused its powers, 24 per cent did not; 75 per cent of the New Yorkers favored stronger controls over CIA, with 12 per cent opposed. But the ratio of the New York respondents who wanted to see a prohibition of domestic wiretapping or surveillance by CIA to those who preferred permission was only 54 to 30; and on the question whether the United States needed a CIA-type organization, the New Yorkers voted "yes" by 69 to 17 per cent.

A nation-wide Harris survey covering a variety of CIA-related questions was unveiled in early September. In offering individuals a list of statements (paraphrased below) to be accepted or rejected, it found a range of perspectives that are worth noting:

| <u>Statement</u> | <u>Reaction</u> |
|---|-----------------|
| Wrong for CIA to be involved in assassination attempts: | Yes 74%; No 11% |
| Wrong for CIA to have spied on Americans here during Vietnam war: | Yes 54%; No 29% |
| CIA got out of control of civilian authorities: | Yes 49%; No 21% |
| Closer monitoring of CIA by Congress and White House in the future: | Yes 66%; No 18% |

| Statement | Reaction |
|--|-----------------|
| Abolish CIA, leaving U.S. with no foreign intelligence agency: | Yes 6%; No 80% |
| More CIA accountability to civilian authorities, but no change in the way it is run: | Yes 47%; No 27% |
| Abolish CIA, but start new foreign intelligence agency with proper civilian controls and safeguards: | Yes 34%; No 45% |
| Put in civilian head of CIA, but don't abolish agency: | Yes 43%; No 31% |
| If not exposed, CIA might have taken over the country: | Yes 24%; No 52% |
| Very important that U.S. have the best foreign intelligence agency in the world, even if it makes some mistakes: | Yes 78%; No 12% |
| Any successful foreign intelligence agency must be operated in secrecy: | Yes 71%; No 13% |
| So many CIA secrets made public that CIA's future ability to operate will now be threatened: | Yes 52%; No 8% |
| Most CIA activities involve serious study of other countries, not spying or violence: | Yes 40%; No 27% |

Harris concluded, inter alia, that while Harris surveys had come up with negative marks for CIA during the past year, "criticism has not been rising despite the recent disclosures about alleged wrong-doing," nor had "the various bodies that have been investigating the CIA ... been building enormous reservoirs of public confidence."²

Other less encompassing surveys showed differing but not necessarily inconsistent results. Detroit Free Press readers voted, 76.6 to 23.4 per cent, against "a tighter rein ... on CIA activities."¹⁰ A nation-wide survey of high school students and college freshmen revealed that 48 per cent of them had "very little confidence in the CIA."¹¹ A Gallup Poll found a mere 14 per cent of those interviewed ready to give CIA a "highly favorable" rating -- well behind the FBI's 37 per cent.¹²

At the end of a year of investigations, with still another poll in hand, Louis Harris drew up a balance sheet. People believed (74 to 9 per cent) that it was wrong for CIA "to work out a deal with Mafia characters to try to assassinate Castro" and that "CIA and FBI ... spying on prominent Americans here at home" was "a violation of basic rights" (by 61 to 18 per cent); and they discounted the notion that both agencies had "learned their lessons and now will run things properly" (by 41 to 30 per cent). But they still felt that "it would be a mistake to put tighter controls on

the CIA and FBI ..." (by 48 to 31 per cent), and that "so much of the secret work ... has been made public that they soon won't be able to do their jobs" (by 52 to 33 per cent). Throughout the year, the public had given negative responses to the question how CIA was doing its job, the percentages being 31-39 the previous December, 34-39 in January, 36-45 in August, 31-51 in November, and 32-49 in December 1975. At the same time, as of December 1975, both the Church Committee (38-40) and the Pike Committee (36-40) had also been given negative ratings. It was, Dr. Harris concluded, "a troubling dilemma. On the one hand ... the public no longer trusts CIA and the FBI to operate on their own, for fear that they will engage in excesses ... On the other hand, people are aware that the two agencies need to conduct their activities in a reasonable amount of secrecy."¹³

4. 1976:

Scattered surveys of limited groups during the first half of the year showed a balanced sampling of Minnesota residents as approving of American espionage activities abroad while disapproving "secret efforts by the United States to influence events in foreign countries," remarkably enough by identical 59 to 32 margins¹⁴; and Women Poll, in telephone interviews of more than 1,000 respondents throughout the country, discovered that CIA was seen by a 54-to-one ratio of the women it contacted as having less public

support than the Supreme Court, Social Security, the FBI and the United Nations (the only other organization with a negative rating).¹⁵

Perhaps more meaningful were a number of surveys obtained by Members of Congress and, as a rule, inserted in the Congressional Record that year. Thus the following percentages were tabulated in the 17th District in Ohio: Abolish CIA: 7; retain as is: 22; retain, but with greater congressional oversight: 42; retain with greater Presidential oversight: 25.¹⁶ -- A questionnaire to North Carolina constituents included two pertinent questions: Should the U.S. maintain intelligence operations in foreign countries? Do you feel that the activities and expenditures of the CIA should be made public? Answers to the first question were divided by a yes-no ratio of 92.44 to 7.55, to the second question by 25.42 to 74.57. (High school seniors, polled separately, divided by 79.8 to 20.2 on the first question and by 52.8 to 47.2 on the second.)¹⁷ -- Constituents in Kentucky's first district, according to Representative Carroll Hubbard, supported by a two-to-one majority stricter intelligence agency controls, but recognized the importance of those agencies and would "vigorously oppose unreasonable restrictions."¹⁸ -- Voters in the 17th District of Illinois, said Representative George M. O'Brien, indicated they "wanted Congress to exercise stricter oversight of our intelligence network and make it illegal to leak congressional secrets" -- i.e.

secrets revealed in congressional testimony.¹⁹ -- Respondents in the 7th District of Texas, asked whether Members of Congress should be permitted to reveal classified national security information, recorded a 93-per cent negative reaction.²⁰ -- A poll of the 12th District of Ohio showed 83 per cent in favor of continued CIA covert operations against governments hostile to the U.S.²¹ -- Constituents in Pennsylvania's 13th District, asked to support one of three statements about the FBI and CIA, were divided by the following percentages: "They have grossly exceeded their jurisdictions and should be completely overhauled, 24; there have been abuses which should be rectified, but the majority of their activities are necessary and desirable, 53; with minor exceptions, they have been doing what they should, 21; other, 2."²² -- Finally, constituents of the 1st District of Arkansas, having been offered a range of statements to agree or disagree with, gave the following replies (in percentages): Congress has gone too far in investigating FBI and CIA -- 45.5 yes, 46.2 no, 8.3 no opinion; the "leaking" of CIA and FBI information is in the nation's best interest -- 20.5 yes, 72.0 no, 7.4 no opinion; CIA should be restricted to collecting intelligence and other information on activities of foreign powers -- 68.3 yes, 25.3 no, 6.3 no opinion; in addition to intelligence gathering, CIA should have authority to try to influence events or policies in other nations -- 27.2 yes, 60.2 no, no opinion 12.5.²³

ANNEX B

PUBLIC COMMENT ON THE HELMS CASE

(Note: The following is a sampling of published comments on the charges against and conviction of Richard Helms for "failing to testify fully and accurately" to a U.S. Senate committee on CIA activities in Chile. The samples were taken from the New York Times, the Washington Post and the Washington Star, and appeared during the period from 28 October to 13 November 1977. They are presented in approximate chronological order, and are intended as a supplement to the discussion of "Truth and Consequences" (Chapter E3d) in the text.

1. BEFORE THE PLEA BARGAIN ANNOUNCEMENT:

From the New York Times

"Some believe that an indictment ... would send a reverberating signal to all in the Invisible Government ... that they are legally responsible for their acts. Others argue that, on the contrary, an indictment would represent injustice, the pious persecution of a devoted official trying to protect essential secrets in an open society ... But there lies ... a more momentous issue concerning the rule of law over intelligence activities ... It is no slight ... to recall the Church committee's words: 'Men entrusted with power, even those aware of its dangers, tend, particularly when pressured, to slight liberty.' Arguing out sensible laws to protect against

that tendency will be hard enough. But at least let the task begin."¹

2. AFTER THE PLEA BARGAIN ANNOUNCEMENT:

a. Senator Frank Church (D-Idaho)

"I thought there was to be an end to the double standard of justice for the big shots. Apparently, Helms was too hot to handle."²

b. From The New York Times

"Larger dilemmas ... remain ... What should some future Richard Helms do when, before some other Congressional hearing, he may be forced to the same choice ...? ... What should some future Attorney General Bell do when confronted with the desire to prosecute -- and the desire not to jeopardize more classified information? ... Some of the problems are already being addressed ... The need remains to dispel the present shadows of authority with clear statutory charters for ... intelligence agencies ... If, new rules notwithstanding, some future intelligence officials still chose to protect secrets rather than obey the law ... the desire to prosecute might be much stronger than in the Helms case -- but the problem of the secrets would remain."³

c. From The Washington Post

"We don't quarrel with this bargain ... But we do question the post-bargain explanation offered by the White House and much of the instant 'liberal' comment on the deal.

For it is not enough to say that the law was upheld and the nation's secrets were protected. That formulation misses the dilemma that made this case genuinely agonizing to conscientious people ... It is easy, even tempting, to overlook that Mr. Helms -- by his oath of secrecy to the CIA, by his professional commitment to the work and method of the CIA, by his devotion to what you might call the theology of secrecy then guiding the CIA -- found it impossible to tell the Senate openly what the CIA had done covertly ... It also needs to be noted that the operations ... had been subjected to all the secret -- and lamentably lax -- oversight that the Congress at that time was prepared to require ... Later, wisely, the country changed the rules to ensure that secret operations would be conducted only with the orderly and explicit (and still secret) consent of Congress. Mr. Helms was caught up in the change ... To us, this calls not for vengeance but a measure of humility, and some sadness ... There was ... no way for Mr. Helms to meet the real double standard in this case -- the irreconcilable conflict, if you will, growing out of an abrupt and profound change in the political climate -- between the congressional permissiveness and acceptance of secrecy ... and the insistence much later on forthright, public discussion ..."⁴

d. Columnist Anthony Lewis

"The Justice Department ... must carry on the establishing of a rule of law for all Government officials, not least in the area of intelligence and police. It must be more

sensitive to the dangers of secrecy -- as in the Helms plea itself, whatever the legal excuse for that unobserved proceeding."⁵

e. From The Washington Star

"Mr. Helms ... had not deliberately sought the committee as a conduit ... The effect of the committee's unwelcome questions was to put Mr. Helms in an awkward, not to say impossible position. Had he declined to answer -- which in hindsight would have been personally prudent -- the effect would probably have been as explosive as candor ... Mr. Helms was under oath not to disclose the secrets of the agency he had lately headed. Loyalty to that oath demanded that he violate the committee's oath. That is not a pleasant choice to ask of a public official; nor is it a fair one. The best you can say is that it is a choice an intelligence professional must sometimes expect. The basic problem was -- and is -- that Congress and the nation are of two minds about intelligence and covert operations ... Thus the meaning of the Helms case, it seems to us, is that we are still groping for a way to reconcile secrecy (and the dubious business of covert intelligence operations it shrouds) with the lofty principles of the rule of law and official accountability ... We keep groping for a magic formula that affords the gratifying pleasure of the rule of law and the security of a useful covert intelligence capacity, but the pain of neither. There is no such formula at hand."⁶

f. Columnist Tom Wicker

"... the plea bargain was considered the most effective, least troublesome way to uphold the rule of law and the Senate's right to investigate. Maybe so. But some nagging questions persist ... It is really secrets the bargain protects, or reputations? Or ... is it ... the system of secrecy, the idea that secrecy is vital? Suppose all those secrets that Mr. Helms' defense would have exposed turned out to be no more 'vital' than those in the Pentagon Papers? As for the possibility that Mr. Helms might have won acquittal, would that necessarily have been less 'deterrent' to the intelligence community than the plea bargain Mr. Helms made? ... the sight of a former high official in the dock might have dramatized even more effectively the point that the C.I.A. is not above the law ... And anyway, after former Vice President Agnew escaped prosecution ... after Richard Nixon received a pardon ... and after the relatively light penalties handed out to all the Watergate defendants except Gordon Liddy -- after that long record of lenient law for the high and the mighty, those who are judged by a different scale of values might already be wondering which rule of law Mr. Bell is talking about."⁷

3. AFTER THE VERDICT:

a. Columnist Anthony Lewis

"The Helms case, with its dramatic denouement, boldly illustrates what Americans have increasingly come to recognize

in recent years: that the claims of national security interests may often conflict, in a democracy, with the interest of law. The tension was a fundamental element in the political and social conflict over Vietnam, Cambodia and Watergate. The departure from office of such principal actors in those episodes as Richard Nixon and Henry Kissinger might have been expected to ease the tension. But Mr. Helms's uncompromising assertion that the special obligations of an intelligence officer override the country's commitment to law reopened the debate. It is an intensely American phenomenon to argue the question in the open at all. Other countries, even the most democratic, tend to treat intelligence and security questions as not suitable for public discussion ... The British view, in general, is that such matters are best confided to men one can trust -- certainly not debated in Parliament or, even less weighed by judges. The British view might have been accepted in this country a generation ago. But loss of respect for the Government's good faith during the Indochina war gradually eroded public willingness to give officials unlimited discretion in matters of security ... United States officials have to have legal authority for whatever they do, and it is the country's habit to measure power in legal terms ... The difficulty, of course, is that some things cannot be decided in the open ... On the other hand, claims of national security may hide something else ...

The conflict between the claims of security and law is illuminated when, on infrequent occasions, it is put to judges. On the whole judges do not like to decide such questions. They defer, when they can, to the supposed expertise of the Executive Branch -- which means deciding the issue in favor of security."⁸

b. From the New York Times

"A remaining question is whether the Helms case will deter future abuses of the law in the name of national security or encourage intelligence agents that they could get off without a prison sentence."⁹

c. Columnist Joseph Kraft

"Neither is there a serious issue of concealing from the Congress what was done. More than a decade before the Chilean events, the CIA had worked out with the Congress proceedings whereby covert actions were reported to specially established oversight committees but not to other committees of the Congress. All CIA covert actions in Chile were duly reported to the established oversight committees. Helms's troubles grew out of testimony to two other committees after he had left the CIA ... The argument for bringing perjury charges is ... intrinsically weak. It rests chiefly on the doctrine of equality before the law -- the principle that people in office should be treated just like anybody else. But doesn't that doctrine apply very poorly to the head of an intelligence organization with a sworn duty to keep secrets? Isn't such an official in a very special category? Doesn't his responsibility not to divulge secrets

to unauthorized people mitigate the offense of not coming totally clean with a congressional committee asking vague questions in regions outside its formal area of responsibility? Especially when the relevant information has been given to other committees? ... James Schlesinger, the Energy Secretary who also headed the CIA, told Helms that he could consider the outcome an honor, to be borne as a kind of dueling scar. But who wielded the sabre? An ungrateful government, I believe, with men serving as President and Attorney General who lacked the courage to stand up to a Congress that didn't want its right hand to know what its left hand was doing."¹⁰

d. Columnist Charles Bartlett

"This concern with purity, even at the risk of freedom, is a mood born of disillusionment with Vietnam and Richard Nixon ... The purists have carried the day ... This means there is lots of purity but very little action ... The injustice in the Helms case was the pressure of the purists to secure an indictment for a pattern of behavior approved by 20 years of consensus within the government ... The properly designated committees, including Symington's, knew fully about the Chilean exercise. Helms in fact believed that Symington was asking the question in public in order to nail down the cover."¹¹

e. Attorney Joseph L. Rauh, Jr.

"Mr. Helms's false testimony commenced not at some Senate hearing where he was defending CIA's reputation, but at a hearing where he was personally seeking confirmation as

ambassador to Iran. The honorable course would have been to refuse to discuss the Chilean incident with the committee and take his chance of losing the ambassadorship. It was not the CIA oath but the ambassadorship that was at stake in his testimony. Thus, Judge Parker was absolutely right when he said Helms had 'dishonored' his oath to tell the truth and stood before the court 'in disgrace and shame.' Law and order and civil freedom would have been better served if Judge Parker had followed his own feelings with a real sentence for what he deemed disgraceful and shameful conduct rather than yielding to the government's intense pressure for their 'no jail' plea bargain. For it is this judge's sentence and not the judge's words that is the message. The CIA now knows that the law is only peripherally for them. The true lesson of Watergate has even now not been learned."¹²

f. Columnist Carl Rowan

"Judge Parker obviously felt that making an example of Helms would do two things: it would warn public officials that their first loyalty is to the law, not to their agency, not to their early oaths, not to their political party or anything else; and it would at least slow down a practice of plea bargains that throw the scales of justice out of balance. It will seem small consolation to Helms, but his punishment just might serve to strengthen both respect for the law and system through which it is administered."¹³

g. From the Washington Post

"The final disposition of the government's case against Richard Helms produced a firm judicial determination that public officials cannot be allowed ... 'to disobey and ignore the laws of our land because of some misguided notion and belief that there are earlier commitments and considerations that they must observe.' But Mr. Helms quite obviously did not accept this view ... That is to say that while the issue was resolved insofar as the Helms case was concerned, it clearly was not resolved as a matter of principle in Mr. Helms's mind, and not in the minds of his supporters inside and outside of government. The public, in other words, was left to wonder in what fashion the conflict of allegiance that confronted Richard Helms ... would be dealt with if it were to arise today. Indeed, the question was sharpened by the government prosecutor's acknowledgment that the rules were 'fuzzy and unclear' four years ago and by Mr. Helms's suggestion that new rules need to be written now. There are, we think, three things to be said about all this, and President Carter said the most important of them yesterday: 'A public official does not have a right to lie.' ... It is one thing to sympathize with the practical dilemma that confronted Mr. Helms ... But it is quite another to elevate his decision to withhold the truth to the status of a 'badge of honor' or a general principle. The second point to be made is that the 'Helms dilemma' has already been resolved in a large part -- there are new ground rules already in effect ... These

rules 1) require the executive branch to furnish Congress information on 'all intelligence activities' and 2) provide a mechanism (in the first instance, the intelligence committees) for doing that ... No longer can a CIA official claim that he is bound by an oath of secrecy not to inform Congress and no longer can an official claim that an appropriate, effective and secure channel for informing Congress does not exist. For its part, the Congress can no longer require a CIA official, let us say, to testify publicly on matters that have already been properly subjected to congressional oversight in executive session. The final point is that there is more to be done ... We are referring to the charters, or legislative mandates, now under preparation for all of the government's intelligence agencies ... The legislation would put the guidelines in the most authoritative form in which national policy can be expressed ... What is needed is for the President to resolve whatever differences there may be within the executive branch and propel the charters forward. Once that has been done, officials of the CIA and other intelligence agencies will have no reason to expect -- nor the public to fear -- that a failure to testify truthfully to Congress under oath will be seen as anything other than a violation of the law."¹⁴

h. Columnist William F. Buckley, Jr.

"With a few exceptions (the obvious ones), the people don't feel that Mr. Helms, by failing to tell what he knew

about clandestine operations in Chile to the Senate Foreign Relations Committee, was disgraced. They intuit the subtlety of the problem ... To say simply that no one is above the law inadequately handles the dilemma of the agent of central intelligence who has taken an antecedent oath not to divulge certain information. That oath was also taken before a duly constituted agency of government -- the Executive ... As a practical matter, it should not be hard to understand the difficulty. If, let us say, an informer agreed to furnish one of our agents with secret information about a hijacking plan ... in return for a large sum of money and the guarantee that his identity will not be made known, how is that agent expected to behave when asked specifically by a congressional committee how the sum of money was spent and to whom it was given? ... Recent experience has shown that there are no effective sanctions against an individual congressman's leaking secret testimony. Thus a solution to the problem cannot be based on the air-tight model."¹⁵

i. Eliot Marshall, Senior Editor of the New Republic

"If Helms thought the senators were not entitled to the information they wanted, he might have said so at the time. In that case, the Senate and the President might have settled the matter between them, possibly agreeing to keep Helms' testimony under lock and key. But Helms made no protest and claimed no executive privilege when asked about Chile. He decided instead that the best approach was simply to tell the Senate nothing. He was wrong ... 'All CIA covert actions in

Chile were fully reported to the established oversight committees,' Kraft claims. So why accuse Helms of deception? The implication is, if you tell the truth to one committee, you can lie to any number of others. By this reasoning, the Senate was to blame for getting Helms in trouble. It shouldn't have allowed 'unauthorized' senators to ask questions that it knew Helms would be forced to answer with lies. This argument, it seems to me, attempts by quick shuffle to move the blame from the deceiver to the deceived. It blames Congress for doing what it legally is entitled to do and it excuses Helms on grounds that he was obeying a higher, secret code. Secret codes appeal to many people and may even be necessary, but they don't govern Congress ... The final point is the one that matters: the shifting standards argument. It is, in brief, the view that Richard Helms was punished because he had the misfortune to pass from one world to another at a time when he had great public responsibilities ... The answer is that in this specific case, Helms was not protecting a private secret, but rather, a public lie ... In choosing between loyalty to a public truth and a public lie, he chose the latter, twice ... Officials may choose to be bound by other unwritten codes. Such things always exist in politics. But the politician who adheres to the secret code over the public code -- aside from breaking the law -- takes great risks. He has no right to complain if his risk taking gets him in trouble."¹⁶

j. Former Senator Eugene J. McCarthy

"The general thrust of commentary ... is that Helms has gotten off easily. He has not. The attorney general and the president have gotten off, if not easily, at least cheaply. Richard Helms should not have been exposed to the indignity of having to plead 'no contest,' or to the abusive verbal attack from Judge Parker. It is difficult to see why Helms, if he considered only his personal reputation and record, would have chosen this way of closing out his case. In the opinion of the attorney general, Helms would probably have been acquitted if the case had gone to a jury. He must have anticipated that some columnists and editors would treat his case as though it were comparable to Spiro Agnew's plea of 'no contest,' to Richard Nixon's pardon, and to the cases of Watergate personnel who, after convictions, were given relatively light penalties. The Justice Department never should have brought the case against Helms ... The institutional characteristics of the CIA were either overlooked, or set aside in the prosecution of Richard Helms. CIA directors and agents do not operate under the general laws of the country (something which Judge Parker, evidently, does not know). They are given special responsibility and special exemptions from the law. First, in the tradition of international espionage, and second by passive, but knowing, acceptance of their activities by the Congress and the president (at least from Eisenhower to Carter) ... Twice in the last 25 years Congress has been challenged to bring the CIA, both as to the substance of its activities and its methods, under

constitutional control, with the president and the Congress sharing knowledge, decision, and responsibility. The proposals were rejected, once in 1954-55 under President Eisenhower, and again in 1965 under President Johnson. One senator, during the 1965 consideration of the proposition, stated the prevailing congressional attitude accurately when he said, 'We don't want to know what the agency does.' ... Helms properly denied that his agency was participating in efforts to overthrow the Allende government. He could not have taken the Fifth, and he could not have refused to answer without prejudicing the secrecy of the action."¹⁷

k. From the Washington Star

"No, said President Carter Thursday, 'a public official does not have the right to lie.' He was answering a question ... The question reflects a familiar, and dangerous, urge to cast conflicts of values, laws and interests in absolute moral terms: a pervasive tendency nowadays ... It was not the legal arrangement itself, negotiated between the Justice Department and Mr. Helms' lawyer, but the exchange during and after sentencing that seems to have raised this question. The three principals needlessly inflamed public feeling about the case -- the judge by insisting that Mr. Helms was shamed and disgraced; Mr. Edward Bennett Williams by countering that Mr. Helms' deportment is not a disgrace but "a badge of honor"; and Mr. Helms himself by agreeing (naturally) with Mr. Williams,

... So far as we are aware ... however, it was not the three principals who mentioned a 'right to lie.' That designation of the Helms dilemma came from a reporter ... To ask the question is to jeopardize the spirit of accommodation and compromise essential to a democratic system. Once you begin to speak of regrettable choices as exercises of 'rights' you beg heated contradiction, and, with it, endless dispute over values and principles that we cannot safely choose between ... This country should not be asked to choose between a necessary degree of secrecy in the conduct of intelligence and such supreme necessities as the rule of law and the expectation of veracity and accountability of its officials. Nor should we be asked to cast these difficult issues in terms of absolute right or wrong. The attempt to make castiron principles where prudence and practice are in question is the path to political disintegration."¹⁸ --

This, it seems to us, is an excellent place to end our quotations.

ANNEX C

EXTRACTS FROM EXECUTIVE ORDER 12036 (JANUARY 26, 1978):

UNITED STATES INTELLIGENCE ACTIVITIES

1-8. The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and other laws, regulations and directives, the CIA, under the direction of the NSC, shall:

1-801. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1-802. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-803. Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

1-804. Conduct counterintelligence activities outside the United States and coordinate counterintelligence activities conducted outside the United States by other agencies within

the Intelligence Community;

1-805. Without assuming or performing any internal security functions, conduct counterintelligence activities within the United States, but only in coordination with the FBI and subject to the approval of the Attorney General;

1-806. Produce and disseminate counterintelligence studies and reports;

1-807. Coordinate the collection outside the United States of intelligence information not otherwise obtainable;

1-808. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

1-809. Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-810. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-811. Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-812. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-801 through 8-811 above, including procurement and essential cover and proprietary arrangements.

1-813. Provide legal and legislative services and other administrative support to the Office of the Director of Central Intelligence.

RESTRICTIONS ON INTELLIGENCE ACTIVITIES

2-1. Adherence to Law.

2-101. Purpose. Information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. The measures employed to acquire such information should be responsive to legitimate governmental needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties.

2-102. Principles of Interpretation. Sections 2-201 through 2-309 set forth limitations which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual rights and acquisition of essential information. Those sections do not authorize any activity not authorized by sections 1-101 through 1-1503 and do not provide any exemption from any other law.

2-2. Restrictions on Certain Collection Techniques.

2-201. General Provisions.

(a) The activities described in Sections 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney

General. Those procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes.

(b) Activities described in sections 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States person is an agent of a foreign power.

2-202. Electronic Surveillance. The CIA may not engage in any electronic surveillance within the United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt within, the United States except as permitted by the procedures established pursuant to section 2-201. Training of personnel by agencies in the Intelligence Community in the use of electronic communications equipment, testing by such agencies of such equipment, and the use of measures to determine the existence and capability of electronic surveillance equipment being used unlawfully shall not be prohibited and

shall also be governed by such procedures. Such activities shall be limited in scope and duration to those necessary to carry out the training, testing or countermeasures purpose. No information derived from communications intercepted in the course of such training, testing or use of countermeasures may be retained or used for any other purpose.

2-203. Television Cameras and Other Monitoring. No agency within the Intelligence Community shall use any electronic or mechanical device surreptitiously and continuously to monitor any person within the United States, or any United States person abroad, except as permitted by the procedures established pursuant to Section 2-201.

2-204. Physical Searches. No agency within the Intelligence Community except the FBI may conduct any unconsented physical searches within the United States. All such searches conducted by the FBI, as well as all such searches conducted by any agency within the Intelligence Community outside the United States and directed against United States persons, shall be undertaken only as permitted by procedures established pursuant to Section 2-201.

2-205. Mail Surveillance. No agency within the Intelligence Community shall open mail or examine envelopes in United States postal channels, except in accordance with applicable statutes and regulations. No agency within the Intelligence Community shall open mail of a United States person abroad except as permitted by procedures established pursuant to Section 2-201.

2-206. Physical Surveillance. The FBI may conduct physical surveillance directed against United States persons or others only in the course of a lawful investigation. Other agencies within the Intelligence Community may not undertake any physical surveillance directed against a United States person unless:

(a) The surveillance is conducted outside the United States and the person being surveilled is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities, or engaging in narcotics production or trafficking;

(b) The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a foreign intelligence or counterintelligence investigation; or

(c) That person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation.

(d) No surveillance under paragraph (c) of this section may be conducted within the United States unless the person being surveilled is a present employee, intelligence agency contractor or employee of such a contractor, or is a military person employed by a non-intelligence element of a military service. Outside the United States

such surveillance may also be conducted against a former employee, intelligence agency contractor or employee of a contractor or a civilian person employed by a non-intelligence element of an agency within the Intelligence Community. A person who is in contact with such a present or former employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

2-207. Undisclosed Participation in Domestic Organizations. No employees may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except as permitted by procedures established pursuant to Section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee approved by the Attorney General finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall further limit undisclosed participation to cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;

(b) The organization concerned is composed primarily of individuals who are not United States

persons and is reasonably believed to be acting on behalf of a foreign power; or

(c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members.

2-208. Collection of Nonpublicly Available Information.

No agency within the Intelligence Community may collect, disseminate or store information concerning the activities of United States persons that is not available publicly, unless it does so with their consent or as permitted by procedures established pursuant to Section 2-201. Those procedures shall limit collection, storage or dissemination to the following types of information:

(a) Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counterintelligence;

(b) Information arising out of a lawful counterintelligence or personnel, physical or communications security investigation;

(c) Information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or

applicants for any such employment or contracting, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(d) Information needed solely to identify individuals in contact with those persons described in paragraph (c) of this section or with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

(f) Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with Section 2-202 or from cooperating sources in the United States;

(g) Information about a person who is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities; or

(k) Information concerning persons or activities that pose a clear threat to any facility or personnel of an agency within the Intelligence Community. Such information may be retained only by the agency threatened and, if appropriate, by the United States Secret Service and the FBI.

2-3. Additional Restrictions and Limitations.

2-301. Tax Information. No agency within the Intelligence Community shall examine tax returns or tax information except as permitted by applicable law.

2-302. Restrictions on Experimentation. No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health, Education and Welfare. The subject's informed consent shall be documented as required by those guidelines.

2-303. Restrictions on Contracting. No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private

companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.

2-304. Restrictions on Personnel Assigned to Other Agencies. An employee detailed to another agency within the federal government shall be responsible to the host agency and shall not report to the parent agency on the affairs of the host agency unless so directed by the host agency. The head of the host agency, and any successor, shall be informed of the employee's relationship with the parent agency.

2-305. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-306. Restrictions on Special Activities. No component of the United States Government except an agency within the Intelligence Community may conduct any special activity. No such agency except the CIA (or the military services in wartime) may conduct any special activity unless the President determines, with the SCC's advice, that another agency is more likely to achieve a particular objective.

2-307. Restrictions on Indirect Participation in Prohibited Activities. No agency of the Intelligence Community shall request or otherwise encourage, directly or indirectly, any person, organization, or government agency to undertake activities forbidden by this Order or by applicable law.

2-308. Restrictions on Assistance to Law Enforcement Authorities. Agencies within the Intelligence Community other than the FBI shall not, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration (or its successor agencies) or to state or local police organizations of the United States; or

(b) Participate in or fund any law enforcement activity within the United States.

2-309. Permissible Assistance to Law Enforcement Authorities. The restrictions in Section 2-308 shall not preclude:

(a) Cooperation with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of any agency within the Intelligence Community;

(b) Participation in law enforcement activities, in accordance with law and this Order, to investigate or prevent clandestine intelligence activities by foreign powers, international narcotics production and trafficking, or international terrorist activities; or

(c) Provision of specialized equipment, technical knowledge, or assistance of expert personnel for use by

any department or agency or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be governed by procedures approved by the Attorney General.

2-310. Permissible Dissemination and Storage of Information. Nothing in Sections 2-201 through 2-309 of this Order shall prohibit:

(a) Dissemination to appropriate law enforcement agencies of information which indicates involvement in activities that may violate federal, state, local or foreign laws;

(b) Storage of information required by law to be retained;

(c) Dissemination of information covered by Section 2-208 (a)-(j) to agencies within the Intelligence Community or entities of cooperating foreign governments; or

(d) Lawful storage or dissemination of information solely for administrative purposes not related to intelligence or security.

ANNEX D

NOTES

A. INTRODUCTION (pp. 1 to 5)

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B. HISTORY OF PUBLIC OPINION (pp. 6 to 27)

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2. Church Committee Report, Book I, p. 492.
3. Ibid., p. 111.
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5. Wall Street Journal, 5 January 1977.

C. CHARGES AGAINST CIA (pp. 28 to 30)

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2. Alleged Assassination Plots Involving Foreign Leaders -- and Interim Report," (Church Committee Report on Assassinations), 20 November 1975.
3. Church Committee Report, Books I to VI, 23/26 April 1976.
4. Letter to the President by the Under Secretary of State (Katzenbach Report), 24 March 1967.

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6. House Select Committee on Intelligence (Pike Committee).

D. EMERGING QUESTIONS (pp. 31 to 33)

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5. Stanley N. Futterman, "Toward Legislative Control of the CIA," from New York University Journal of International Law & Politics, Winter 1971, pp. 439, 455-456.

6. Blum, Surveillance and Espionage in a Free Society, p. 184.

7. Ibid., p. 208.

8. Ibid., p. 210.

9. Robert L. Borosage and John Marks, The CIA File, New York: Grossman/Viking, 1976, p. 128.

10. Young Hum Kim, The Central Intelligence Agency: Problems of Secrecy in a Democracy, p. 105.

11. Borosage and Marks, The CIA File, pp. 79, 81.

(pp. 37 to 85 cont'd)

12. Katzenbach, "Foreign Policy, Public Opinion and Secrecy," p. 10.
13. Harry Howe Ransom, The Intelligence Establishment, Cambridge, Massachusetts: Harvard University Press, 1958, p. 160.
14. Report of the Royal Commission on Security (Abridged). Ottawa, Canada: The Queen's Printer, 1969, p. 435.
15. Ransom, The Intelligence Establishment, pp. 85-86.
16. Church Committee Report, Book I, p. 132.
17. Futterman, "Toward Legislative Control of the CIA," p. 433.
18. Church Committee Report, Book I, p. 31.
19. Ibid., p. 150.
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116. David Atlee Phillips, The Night Watch, p. 273.
117. White House Statement. See The Washington Post, 1 November 1977, p. A4.
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14. Minneapolis Tribune, 27 April 1976.
15. Philadelphia Inquirer, 24 June 1976.
16. Congressional Record, 1 July 1976, p. H7172.
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2. The Washington Post, November 1977.

3. Editorial, The New York Times, 2 November 1977.

4. Editorial, The Washington Post, 2 November 1977.

5. The New York Times, 3 November 1977.

6. Editorial, The Washington Star, 3 November 1977.

7. The New York Times, 4 November 1977.

8. Ibid., 6 November 1977.

9. Editorial, Ibid., 6 November 1977.

10. The Washington Post, 8 November 1977.

11. The Washington Star, 9 November 1977.

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13. The Washington Star, 9 November 1977.

14. Editorial, The Washington Post, 11 November 1977.

15. The Washington Star, 11 November 1977.

16. Ibid., 12 November 1977.

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